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Forty-seventh Session, 1935

13th, 14th and 16th to 20th December, 1935.

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GOVERNMENT OF BENGAL.

GOVERNOR OF BENGAL.

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2. Khan Bahadur MUHAMMAD ABDUL MOMIN.
3. Mr. NARENDRA KUMAR BASU.
4. Maharaja SRIS CHANDRA NANDY, of Kasimbazar.

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ALPHABETICAL LIST OF MEMBERS.

A

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Ali, Maulvi Syed Nausher. [Jessore South (Muhammadan).]
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B

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C

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Chowdhury, Haji Badi Ahmed. [Chittagong South (Muhammadan).]
Choudhury, Maulvi Nural Absar. [Chittagong North (Muhammadan).]
Cohen, Mr. D. J. (Nominated Non-official.)
Cooper, Mr. C. G. (Indian Jute Mills Association.)

D

Das, Babu Guruprosad. (Nominated Non-official.)
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Das, Rai Bahadur Satyendra Kumar. [Dacca City (Non-Muhammadan).]
Dunlop, Mr. R. W. B. (Indian Tea Association.)
Dutt, Rai Bahadur Dr. Haridhan. [Calcutta Central (Non-Muhammadan).]

E

Eusufji, Maulvi Nur Rahman Khan. [Mymensingh South-West (Muhammadan).]

F

Faroqui, the Hon'ble Nawab K. G. M., Khan Bahadur. [Minister.] [Tippera South (Muhammadan).]
Fazlullah, Maulvi Muhammad. [Noakhali West (Muhammadan).]
Ferguson, Mr. R. H. [Rajshahi (European).]

G

Ghose, Dr. Amulya Ratan. [Howrah Municipal (Non-Muhammadan).]
Ghose, Rai Bahadur Sasonka Comar, C.I.E. (Dacca University.)
Gilchrist, Mr. R. N., C.I.E. (Nominated Official.)
Gladding, Mr. D. (Nominated Official.)
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Guthrie, Mr. F. C. [Presidency and Burdwan (European.)]

H

Hakim, Maulvi Abdul. [Mymensingh Central (Muhammadan).]
Haldar, Mr. S. K. (Nominated Official.)
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Homan, Mr. F. T. (Bengal Chamber of Commerce.)
Hooper, Mr. G. G. (Nominated Official.)
Hoque, Kazi Emdadul. [Rangpur East (Muhammadan).]
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Hossain, Maulvi Muhammad. [Bakarganj North (Muhammadan).]
Hussain, Maulvi Latafat. (Nominated Non-official.)

K

Karim, Maulvi Abdul. [Burdwan Division South (Muhammadan).]
Kasem, Maulvi Abul. [Burdwan Division North (Muhammadan).]
Khan, Khan Bahadur Maulvi Muazzam Ali. [Pabna (Muhammadan).]
Khan, Maulvi Abi Abdulla. [Bakarganj South (Muhammadan).]
Khan, Khan Bahadur, Hashem Ali. [Bakarganj West (Muhammadan).]
*Khan, Mr. Razaur Rahman, B.L. [Dacca East Rural (Muhammadan).]
Khan, Maulvi Tamizuddin. [Faridpur South (Muhammadan).]

L

Lamb, Mr. T. (Bengal Chamber of Commerce.)
Law, Mr. Surendra Nath. (Bengal National Chamber of Commerce.)
Leeson, Mr. G. W. (Bengal Chamber of Commerce.)

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*Deputy President, Bengal Legislative Council.

M

Maguire, Mr. L. T. (Anglo-Indian.)
Maiti, Mr. R. [Midnapore South (Non-Muhammadan).]
McCluskie, Mr. E. T. (Anglo-Indian.)
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Mitter, Mr. S. C. (Nominated Official.)
Mitter, the Hon'ble Sir Brojendra Lal, K.C.S.I. (Member, Council.)
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Momin, Khan Bahadur Muhammad Abdul. [Noakhali East (Muhammadan).]
Mookerjee, Mr. Syamaprosad, Bar.-at-Law. (Calcutta University.)
Mukherji, Rai Bahadur Satish Chandra. [Hooghly Rural (Non-Muhammadan).]
Mukhopadhaya, Rai Sahib Sarat Chandra. [Midnapore South-East (Non-Muhammadan).]
Mullick, Mr. Mukunda Behary. (Nominated Non-official.)

N

Nag, Reverend B. A. (Nominated Non-official.)
Nag, Babu Suk Lal. [Khulna (Non-Muhammadan).]
Nandy, Maharaja Sris Chandra, of Kasimbazar. (Bengal National Chamber of Commerce.)
Nazimuddin, the Hon'ble Khwaja Sir, K.C.I.E. (Member, Executive Council.)
Norton, Mr. H. R. (Calcutta Trades Association.)

P

Paul, Sir Hari Sanker, KT. [Calcutta South (Non-Muhammadan).]
Poddar, Mr. Ananda Mohan. (Bengal Mahajan Sabha.)
Poddar, Seth Hunuman Prosad. [Calcutta West (Non-Muhammadan).]
Porter, Mr. A. E. (Nominated Official.)

Q

Quasem, Maulvi Abul. [Khulna (Muhammadan).]

R

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Rahman, Mr. A. F. [Rangpur West (Muhammadan).]
Rahman, Khan Bahadur A. F. M. Abdur-. [24-Parganas Rural (Muhammadan).]
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Ray Chowdhury, Mr. K. C. (Nominated Non-official.)
Ray Chowdhury, Babu Satish Chandra. [Mymensingh East (Non-Muhammadan).]
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Roy, Mr. Sarat Kumar. (Presidency Landholders.)
Roy Choudhuri, Babu Hem Chandra. [Noakhali (Non-Muhammadan).]

S

Saadatullah, Maulvi Muhammad. [24-Parganas Municipal (Muhammadan).]
Sachse, Mr. F. A., C.S.I., C.I.E. (Nominated Expert.)
Sahana, Rai Bahadur Satya Kinkar. [Bankura East (Non-Muhammadan).]
Samad, Maulvi Abdus. [Murshidabad (Muhammadan).]
Sen, Rai Sahib Akshoy Kumar., [Faridpur North (Non-Muhammadan).]

*President of the Bengal Legislative Council.

Sen, Rai Bahadur Gris Chandra. (Expert, Nominated.)
Sen, Rai Bahadur Jogesh Chandra. [24-Parganas Municipal South (Non-Muhammadan).]
Sen Gupta, Dr. Naresh Chandra. [Mymensingh West (Non-Muhammadan).]
Shah, Maulvi Abdul Hamid. [Mymensingh East (Muhammadan).]
Singh, Srijut Taj Bahadur. [Murshidabad (Non-Muhammadan).]
Singha, Mr. Arun Chandra. (Chittagong Landholders.)
Sinha, Raja Bahadur Bhupendra Narayan, of Nashipur. (Burdwan Landholders.)
Sircar, Dr. Sir Nilratan, KT., M.D. [Calcutta South (Non-Muhammadan).]
Solaiman, Maulvi Muhammad. [Barrackpore Municipal (Muhammadan).]
Steven, Mr. J. W. R. [Dacca and Chittagong (European).]
Stevens, Mr. H. S. E. (Nominated Official.)
Suhrawardy, Mr. H. S. [Calcutta South (Muhammadan).]

T

Tarafder, Maulvi Rajibuddin [Bogra (Muhammadan).]
Thompson, Mr. W. H. (Bengal Chamber of Commerce.)
Townend, Mr. H. P. V. (Nominated Official.)

W

Walker, Mr. J. R. (Indian Jute Mills Association.)
Woodhead, the Hon'ble Sir John, K.C.S.I., C.I.E. (Member, Executive Council.)
Wordsworth, Mr. W. C. (Bengal Chamber of Commerce.)

THE BENGAL LEGISLATIVE COUNCIL PROCEEDINGS

(Official Report of the Forty-seventh Session.)

Volume XLVII—2.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 13th December, 1935, at 2 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, the three Hon'ble Ministers and 89 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Bengal Government Press—Increase of expenditure.

***24. Maulvi LATAFAT HOSSAIN:** With reference to starred question No. 175, dated the 24th March, 1934, stating that the establishment of the Bengal Government Press was smaller with the purchase of modern machines and the statement in reply to starred question No. 42 of the 6th March, 1935, showing expenditure on pay of establishment in 1927-28 as Rs. 4,98,519 and in 1934-35 as Rs. 5,58,500, will the Hon'ble Member in charge of the Finance Department be pleased to state the reasons for the increase.

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Sir John Woodhead): The increase is due to—

(*a*) liberalisation of the rates of pay and conditions of service of the piece-workers as a result of the recommendations of the Piece Workers' Committee, 1926;

(*b*) periodical increments of the salaried employees; and

(*c*) increase of work.

Recruitment to Bengal Judicial Service.

*25. **Mr. MUKUNDA BEHARY MULLICK:** Will the Hon'ble Member in charge of the Judicial Department be pleased to lay on the table a statement showing for the years 1934 and 1935—

(*i*) the total number of appointments made as munsifs in the Bengal Civil Service (Judicial);

(*ii*) the number of qualified candidates for appointment to this service from amongst the scheduled castes (depressed class);

(*iii*) the number of years that those appointed practised at the bar before their appointments as munsifs;

(*iv*) how many of those appointed have any relationship to any officer in any Government service; and

(*v*) the number of appointments made from amongst the candidates of the scheduled castes?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): A statement is laid on the table.

Statement referred to in the reply to starred question No. 25.

(*i*) 1934—Nil.
1935—35.

(*ii*) Six only with the minimum qualification for eligibility.

(*iii*)

	Names of the selected candidates.	Length of practice at the Bar. (Up to 1st December, 1934.)
1.	Bikas Chandra Nandi Majumdar	10 months.
2.	Saurendra Mohon Banerji	4 years 1 month.
3.	Nagendra Mohon Sarkar	5 years 1 month.
4.	Kamalesh Chandra Sen	3 years 3 months.
5.	Phatik Chandra Roy Chaudhuri	2 years 3 months.
6.	Dhirendra Nath Chakladar	5 years 11 months.
7.	Sushil Chandra Mukharji	3 years 8 months.
8.	Srimatha Nath Bhattacharji	5 years.
9.	Gobordhan Kumar	1 year 1 month.
10.	Bhupendra Kumar Panda	2 years 10 months.
11.	Sailesh Chandra Talukdar	4 years 3 months.
12.	Kalipada Chattaraj	2 years 7 months.
13.	Bijayesh Mukharji	2 years 3 months.
14.	Wooshakar Basu Majumdar	2 years 8 months.
15.	Charu Chandra Chakrabatti	1 year 8 months.
16.	Sailendra Prasad Ghosh	1 year 11 months.

Names of the selected candidates.	Length of practice at the Bar. (Up to 1st December, 1934).
17. Samarendra Narayan Bagchi ..	.. 6 months.
18. Sudhir Ranjan Ghosh ..	.. 7 months.
19. Rishori Lal Pramanik ..	.. 2 months.
20. Haridas Ghosh	.. 1 year 1 month.
21. Sital Prasad Chattarji ..	.. 3 months.
22. Amiya Nimai Chakrabarti ..	.. 3 months.
23. Ranadhir Chandra Sarma Sarkar	.. 5 months.
24. Sailendra Nath Sen Gupta ..	.. 3 months.
25. Mahood Ali Khan ..	.. 3 years 1 month.
26. Abdul Majid	.. 3 years 8 months.
27. Md. Idris	.. 3 years 5 months.
28. Md. Enayat Pir	.. 1 year 9 months.
29. Md. Ibrahim	.. 1 year 1 month.
30. Sikandar Ali	.. 1 year 1 month.
31. Abdus Sobhan Chaudhuri ..	.. 2 years 3 months.
32. Abul Kasem Khan ..	.. 8 months.
33. Md. Hossain Ali	.. 5 months (Up to 1st April, 1935.)
34. Durgadas Basu	.. 4 months.
35. Ranendra Nath Datta ..	.. Nil.

(*iv*) Sixteen.

(*v*) Nil.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Bengal Government Press—Work for old hands amongst piece-workers.

10. Maulvi LATAFAT HOSSAIN: (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to state—

(*i*) whether it is a fact that in paragraph 13 of their Report the Bengal Piece Workers' Committee, 1926, recommended lighter work for the older hands employed in the Bengal Government Press; and

(*ii*) that the same recommendation was accepted by the Government?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to lay on the table a statement showing—

(*i*) how many old employed hands in the Bengal Government Press, including machine men and binders, enjoy at present lighter works;

(*ii*) their names;

(*iii*) their ages; and

(*iv*) the nature of works done by them?

The Hon'ble Sir JOHN WOODHEAD: (*a*) (*i*) The Committee recommended that in later life piece-workers should, if they desired it, be put on the lighter kinds of work.

(*ii*) Government accepted the recommendation in the following modified form, viz., that the old hands should, if they desired it, and were qualified for hour work as far as practicable, be put on to hour work.

(*b*) (*i*), (*ii*), (*iii*) and (*iv*) Only two piece-workers have applied to be put on to lighter work and have accordingly been put on to hour work. They are Santosh Kumar Chatterjee, aged 49 years, and Kedar Chandra Nath, aged 54 years, both compositors.

Bengal Government Press—Expenditure for piece-workers.

11. Maulvi LATAFAT HOSSAIN: (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to state:—

(*i*) whether it is a fact that there are many employees in the Bengal Government Press who are piece-employees; and

(*ii*) whether it is a fact that the expenditure incurred on them is classed under one budget head?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Member be pleased to lay a statement showing for the year 1934-35—

(*i*) the total expenditure incurred for the piece-rated employees;

(*ii*) the names of the class of employees who are piece-rated; and

(*iii*) the expenditure incurred for each of the class?

The Hon'ble Sir JOHN WOODHEAD: (*a*) (*i*) Yes.

(*ii*) Expenditure on account of their pay and leave allowances is classified under a single detailed head of the budget.

(*b*) A statement is laid on the table.

Statement referred to in the reply to unstarred question No. 11, showing expenditure on account of pay and leave allowances of piece-workers of the Bengal Government Press for the year 1934-35.

Class of operators.	Pay.		Leave allowances.		Total.	
	Rs.	As.	Rs.	As.	Rs.	As.
Lino Operators ..	36,556	14	2,566	5	39,123	3
Mono Operators ..	12,822	8	409	4	13,231	12
Mono Castors ..	9,214	9	578	11	9,793	4
Compositors ..	1,23,740	0	12,890	2	1,36,630	2
Distributors ..	7,557	5	574	3	8,131	8
Machine Men ..	20,710	11	1,251	14	21,962	9
Binders ..	33,438	2	4,691	14	38,130	0
					2,67,002	6
Less fines ..					34	14
					2,66,967	8

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 21(*2*), lines 3 and 4, for the words "or when the insolvent has paid all the annual instalments or," the words "or when he has paid all the sums fixed by the Board under sub-section (*1b*) or when" be substituted.

Sir, this is a consequential amendment, necessitated by amendments Nos. 485-86(?), which was accepted by the House the other day.

The amendment was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to move that in clause 21(*2*), in the penultimate line, the words "or might have been" be omitted.

This is a very important clause, as it relates to order of debts of discharge by way of granting a certificate to the debtor. That being so, the order should not be passed behind the back of somebody who is vitally interested in the matter. The clause proposes to discharge an insolvent debtor not only from all the debts mentioned in his application made under section 9, but also from those debts contracted by him, but not mentioned in his application. Sir, clause 9 provides that all debts due from a debtor must be mentioned in his application to enable the Board to issue notices to those creditors. If, therefore, a creditor's name is omitted in the application, intentionally or unintentionally, I think it is not at all proper that the insolvent debtor should be discharged of the liability of the debt which has not been mentioned in the application. It is quite natural that such a creditor may not be aware of the fact that the debtor has made an application, and as such he may not have an opportunity to approach the Board with his claims in time. It is really doing an injustice to a creditor if an order is passed in his absence and without giving him an opportunity to appear.

Babu JATINDRA NATH BASU: Sir, I beg to support the amendment. As has been pointed out by the mover, when an application has been made by a debtor, it may happen that he has not included in his application all the debts owing by him. The policy of the Act, no doubt, is that all debts existing at the time when an application is made, should be brought in. If, therefore, certain creditors are left out, it cannot be due to any negligence on the part of the creditors. But what this sub-clause (2) of clause 21 provides is that when, as the result of the proceedings, a certificate of discharge is given to a debtor, that certificate of discharge will release the debtor not only from all debts mentioned in the application, but also from debts which might not have been included in that application. If the debtor did not include certain debts in his application, the creditors, to whom those debts were owing, would have no knowledge that proceedings were going on under this Act. I cannot, therefore, understand why their interest should, in any way, be affected by a certificate. The certificate should be confined to such creditors as have been mentioned in the application, and not to creditors who have been no parties to the proceedings before the Board. If this is not done, Sir, the Board will be deciding claims without hearing the claimants, and not only without hearing them, but also without affording them any opportunity to come before the Board to state their claims and to have them included in the list of debts. On these grounds, Sir, I support the amendment moved by Babu Hem Chandra Roy Choudhuri.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, the point of view put forward by the mover and the supporter of the amendment has a certain amount of force behind it, but, on the other hand, the difficulty

that we are faced with is that it is quite conceivable to have a case where the debtor may not know his amount of debt or may not know of the existence of some of his debts. These people often sign blank *hundis* and it is quite possible that a man might have paid the amount, though actually, owing to the blank *hundi* signed, the debt exists on paper. That is a case, Sir, where the debtor may not know that the debt exists. Then, Sir, it may often happen that the debt was incurred by a debtor's father or by his ancestors, and he may not know of its existence. If the amendment is accepted, it will mean that in such cases, while the creditors, who are a party to the proceedings, will not be able to realise anything beyond the amount realisable under the Act, the other creditors will be able to realise their dues in full by selling up whatever is left to the insolvent debtor under the Act. Obviously, Sir, it is the duty of all creditors to see that the man to whom they have lent money is not defrauding them by approaching the Board when established in the locality under the provisions of this Act. It is their duty to be on the look-out to see that all their claims are put forward before the Board, and if they do not take that precaution, I think the responsibility for losing their shares lies on them. If this amendment is accepted, it will create serious difficulties in working the scheme proposed under this Act.

Mr. S. M. BOSE: Sir, the Hon'ble Member has admitted that there is some force in the amendment moved, and for that we are indeed grateful to him. I am glad to find that he has admitted that there is some force in some of our amendments. Then, Sir, his point is that it may be that the debtor did not know of all his debts, having signed a blank *hundi*, and that there may be his father's debt of which he may not be aware. He, therefore, says that it is the duty of the creditor at all times to watch and see, after the establishment of a Board in the locality, whether debtor A, B or C amongst the 20,000 men in that locality has put in an application. He will have to be at the Board's office all the time to know whether his debtor has applied or not. If you turn to clause 11(*1*), you will find that when an application is made by a debtor, the following shall be included, viz., (*a*) the names and addresses of his creditors. The object of making this provision clearly is that notices may afterwards be served upon those individual persons whose names and addresses are given. Suppose, a creditor's name is not given in the list, that is in the statement of debts filed under sub-clause 11(*1*)(*a*). How is that creditor to know that the debtor is an applicant at all? The Hon'ble Member would cast the duty to the creditor to be at all times hanging about the Board's office to find out whether A, B or C has applied or not. That, Sir, is surely unreasonable. The point raised by the hon'ble mover and Mr. J. N. Basu is very clear. When a creditor's name has been omitted from the list—no matter whether deliberately done or not—why

should the adjudication apply to debts which were or which might have been included. These are very very wide words. People who have not the least idea of things being done behind their back, creditors who know nothing at all, they are to be punished, and why? Because forsooth the debtor might have included their names in his application under section 9, in spite of the fact that there is a provision that the creditors' names and addresses should be given under section 11. Sir, there is no reason behind the rule that where the debtor defaults—and it is immaterial for my argument as to whether he does so deliberately or not—the creditor's claim is ignored, and when the debtor has failed in his duty to include a debt, whether through ignorance or for any other reason, it is absolutely immaterial to examine that the creditor is to be penalised behind his back. Sir, I see no possible shade of a shadow of reason to support this absurd proviso.

Maulvi SYED MAJID BAKSH: I wonder how lawyers, who in Law Courts adumbrate the principles of law, absolutely forget or manage to conceal them, when they come before this House to plead for a wrong case. Sir, I admit that it is a difficult expression "might have been," but if my friends will refer to section 11 of the Civil Procedure Code—the section of *res adjudicata*—they will find that what might have been put forward as a claim is barred under that section. I am sorry, therefore, to find that the Hon'ble Member has admitted that there is some force in the arguments of the mover. I should have said that there was no force whatsoever in such claims. This is necessary, Sir, in order to put a finality only in all proceedings. The Civil Procedure Code has put a finality, and here the same thing has been done. If this is not done, an insolvent on his acquiring some property afterwards might again be brought before the Board on account of his prior debts, and this thing will go on, and there will be no finality. This will be repeated *ad infinitum*. This is one of the legal principles which my friends forget or manage to conceal——

Mr. S. M. BOSE: On a point of personal explanation, Sir. It is not a fact that we are deliberately concealing what we know to be true.

Babu JATINDRA NATH BASU: I should also like to say in this connection that the reference to section 11 of the Civil Procedure Code is one of the worst abuses of misapplication that has ever been come across.

Maulvi SYED MAJID BAKSH: But, Sir, you have got to accept it, you have got to adjudicate under it, and you can never go beyond it; otherwise, it would be absolutely impossible for the work to go on. If it is found that a creditor's name has not been included in the list, he

may go to the Board to have the proceedings set aside, and then if he is dissatisfied with the decision of the Board, he may go to the appellate officer. If, in spite of these opportunities given to him, it is intended that these proceedings before the Board should be continued times without number by different sets of creditors coming one after another, I do not know how a finality can be reached in these matters. I think, therefore, that there is absolutely no force in the argument of the mover and of the supporter of this amendment from a legal point of view.

Maulvi TAMIZUDDIN KHAN: Sir, the question is, when an insolvent is discharged, whether he should be discharged only of the liabilities mentioned in his application or whether he should be discharged of all liabilities which might have been included in the application. My friend's amendment purports to omit the words "debts that might have been included." These words are sought to be omitted, and the reasons adduced in support of the amendment are that it would be a great hardship on the part of the creditors who did not know of the application at all and of the insolvency granted if their dues are wiped out in this way. First of all, I submit, Sir, that there is no likelihood of there being any such creditors at all. Notices will be served on all creditors, and then under section 13, a general notice will be circulated requiring all creditors to submit their statements. If a general notice is served, it can be presumed that all creditors who are interested will come forward and file their objections. If, in spite of such a general notice, creditors do not come forward, I think they deserve no sympathy. On these grounds, Sir, I oppose this amendment.

Babu KHETTER MOHAN RAY: I am sorry to find that my hon'ble friend, Maulvi Tamizuddin Khan, has no sympathy for creditors whose names have been omitted in the application, but he has full sympathy for such debtors who have deliberately omitted the names of his creditors in the application with a view to defraud them. There may be creditors who are not residents of the locality; they might not know what proceeding was being taken in the Conciliation Board. Simply because there would be a general notice that might be hung up on the nearest tree of the house in which the Board might be located, a creditor would be deprived of his claims because he did not come forward to the Board at the proper time. Another legal question that has been raised is that, if the expression is omitted, there will be no finality in the proceedings. My friend, Maulvi Syed Majid Baksh, has referred to section 11 of the Civil Procedure Code. Sir, section 11 of the Civil Procedure Code deals with certain facts and issues which, if once adjudicated, cannot be readjudicated. That is quite right, Sir, but there is no provision that persons who are not parties to a suit in which certain questions have been decided, must be bound by such

decisions. In that case, finality is concerned with respect to the parties to a suit, but not with respect to outsiders; but here in this particular case persons who will be affected will not be parties to the proceedings before the Board. They are simply outsiders whose names have not been mentioned, although this should have been done. In this case, we are going to penalise the creditors for the fault of the debtor to omit their names, though it is the latter who ought to have suffered the consequence. In the circumstances, Sir, the words "might have been included" should be excluded from the clause.

Mr. H. P. V. TOWNEND: On the general question, Sir, I need say nothing, because the Hon'ble Member's remarks that it is essential for the working of the clause have not been answered. There is a minor point, to which I would like to draw attention. The amendment proposes to omit the words "or might have been". Suppose this is accepted. What will happen to the debts of which notice has been given by creditors in their statements of debt, submitted after the issue of an order by the Board under clause 13? Suppose a debtor has not put certain debts in his statement but his creditors come and say, he owes this amount, this amount and this amount. According to the mover of this amendment, he cannot be freed from debts which are known to exist, (merely because through ignorance or inadvertence he has not included them in his statement) even though he has been declared an insolvent by the Board. That would be a ridiculous position, Sir, and on that ground alone, apart from anything else this amendment ought to be opposed.

The amendment was put and lost.

The question that clause 21, as amended, stand part of the Bill, was put and agreed to.

Clause 21A.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 21A the following be substituted, namely:—

"21A. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (*b*) of sub-section (*1*) of section 19 or under section 21, and the provisions of section 20 shall not apply to the principal of any such debt."

Sir, this amendment like practically all those which I have been compelled to move is to all intents and purposes a drafting amendment. The wording of the clause, as it emerged from the Select Committee, did not correspond with the intentions of the Select Committee. The intention of the Select Committee was that rent should be dealt with as "debt" for the purposes of this Bill. That is obvious from the

other clauses which have been retained in the Bill either without or with modification. But the result of this clause, as it stands, would be that arrears of rent could not be dealt with at all under the Bill: it would for the application of the only clause under which anything could be done: there could be no award about arrears of rent, even if there were an amicable agreement, and it would be impossible to deal with arrears of rent when a man was declared insolvent. It is necessary that this defect should be removed, and that the intention should be made clear that any amount actually due as rent, and not as interest, could be dealt with under the Act but should not be reduced on any account, except by consent. It has been suggested in conversation that this amendment, as it stands, would weaken the position of the landlord, but I do not think this is so. It does not cover clause 19 (*1*) (*a*) but that deals only with amicable awards: it would allow under clause 19 (*1*) (*b*) awards dealing with interest or prescribing the instalments by which arrears of rent would be payable, but that would not prejudice landlords: clause 19 (*1*) (*c*) has disappeared from the Bill: but under clause 20 it may be possible to say that landlords should accept a fair offer about the interest due on the amount or instalment proposed, but no suit could be barred under clause 20 for the recovery of the principal of rent due. As to clause 21 the position as regards rent has been made clear by a short notice amendment which was accepted by this House when the Bill was under discussion three days ago. The only possible difficulty might have been under clause 21 (*1*) (*b*) when a Board decided to sell a portion of the land and to exclude from sale the dwelling house and one-third of the insolvent's property: there was a fear expressed here that the dwelling house and the land excluded from the sale might not be liable for sale even though arrears of rent had to be recovered. But the House made it quite certain by the amendment passed three days ago that the position regarding arrears of rent would not be changed by anything in this clause.

In view of this explanation, I think, there can be no contesting my view that this is purely a drafting amendment.

The amendment was put and agreed to.

The question that clause 21A, as amended, stand part of the Bill, was put and gareed to.

Clause 22.

Mr. H. P. V. TOWNEND: May I make a slight correction in the amendment as printed? By an oversight I allowed the words "subsection (*3*)" to remain, although notice was given in amendment 520

that, where they occur in clause 3, they should be struck out. The amendment with this change would run as follows:—

That in clause 22 (*2*), lines 2 and 3, for the words, brackets and figures "or sub-section (*3*) of section 25 for the recovery of any unsecured debt," the words, brackets and figures "and from sale for the recovery of any unsecured debt under section 25" be substituted.

This is to prevent anyone thinking that the dwelling house can be sold for recovery of a secured debt, even after it has been exempted. That this is the intention of the Bill is quite clear from the other clauses and from the discusison which took place three days ago when this House approved of an amendment adding provision in clause (*1c*) which removed any possibility of misunderstanding. This is a drafting amendment therefore. As the words stand in this clause they might be interpreted either way; but we want the Bill to be consistent and this amendment will bring the clause into consistency with the other clauses.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 22(*3*), line 5, the words, brackets and figure "sub-section (*3*) of" be omitted.

This is the amendment, Sir, to which I referred in my last speech. The insertion of the words was, I think, a mistake. The sale of movable property would not be covered by the clause as it stands.

The amendment was put and agreed to.

Maulvi ABUL QUASEM: I beg to move that in clause 22 (*3*), last line, after the words "sub-section (*1*)," the following be added, namely:—

"and, subject to the provisions of paragraph (*b*) of sub-section (*1*) of section 21, the immovable property excluded as provision towards maintenance."

I would like to make a few alterations in my amendment. I would like to omit the words "subject to the provisions of paragraph (*b*) of sub-section (*1*) of section 21."

Mr. PRESIDENT: You have my permission to do so.

Maulvi ABUL QUASEM: I have very few words to say in support of this motion of mine. Under this section the properties which shall be exempted from sale, if a particular debtor is declared insolvent, are stated to be such movable property as shall be prescribed .....and subject to certain provisions his dwelling house. I want the immovable property excluded as provision towards maintenance under clause 21 to be mentioned along with other properties which have been exempted. I want nothing new. I hope I have made my position clear. May I repeat that under section 21 (*1c*) as it now stands as a result of amendment Nos. 487-488 being accepted by this

House, certain immovable property has been set aside as provision towards maintenance of an insolvent debtor. I only want that this particular exemption should also be mentioned here in connection with the other properties of the insolvent debtor which are being exempted from the sale. That is the reason for my amendment.

Babu HEM CHANDRA ROY CHOUDHURI: I rise to oppose this motion. This clause 22(*3*) refers to clause 21(*a*) and (*b*) and the provisions contained in clause 21(*a*) and (*b*) and those in 21(*1c*) are quite different. There are two alternative provisions embodied in clause 21. The first provision is this: That the debt of an insolvent debtor will be reduced to such an amount as he can pay within a period not exceeding 20 years, and the second provision is this: That if the Board consider that the debt of an insolvent under clause (*a*) of sub-section (*1*) should not be reduced or cannot be reduced, then the Board shall direct the sale of the insolvent's property under clause (*b*) of sub-section (*1*). When the Board direct the sale of the insolvent's property, it shall also make an order that such and such property shall be set aside for the maintenance of the debtor. These are the two provisions. When action is taken under the first provision, there will not be any order for sale of the property. Only in cases when the insolvent debtor fails to pay any instalment of that reduced debt, then sale will take place. But under clause 21(*1c*) the Board will direct that the property of the insolvent will be sold forthwith and in that case a portion of the property will be set aside for the maintenance of the insolvent. This clause 22(*3*) is applicable only in cases where the insolvent debtor's debt is reduced to such an extent as he may pay within a certain period and if he fails to pay any instalment, his property will be sold under clause 22(*3*). So these two provisions are quite different. When a debtor gets a concession by way of reduction of his debt and that reduced amount is compatible with his capacity to pay, there is no reason why any portion of his property should be exempted from sale in case he neglects to pay any instalment of reduced debt. So I oppose it. This point was fully discussed by the Select Committee, and I think it has been rightly accepted that in cases where the insolvent debtor fails to pay the reduced debt no portion of his property should be exempted from sale subject to the provision of sub-clause (*2*) of clause 23.

Mr. H. P. V. TOWNEND: I think that the remarks of Mr. Roy Choudhuri are due to a confusion between section 21 (*1*) (*a*) and section 21 (*1*) (*1a*). When I was going through these amendments before the House began discussing this Bill I was advised by the Legislative Department that there was no necessity for this amendment as it was covered by the Bill as it stood. But it has occurred to me that an amendment which is to be proposed later, No. 580, may lead to a certain amount of confusion and in view of that it

would seem advisable to accept this. By amendment 580 it will be laid down that where a certificate officer cannot realise the whole amount under the Public Demands Recovery Act (I am assuming now that the House will accept amendment 580) he should be entitled to sell the property which is excluded from sale under that Act. It is possible that he may think, or he may be led to think, that he should then go further than the order of the Board under clause 21 (*1*) (*1b*) and sell property which has been exempted. The actual wording of the Bill as it stands covers, I think, Mr. Quasem's amendment. There is nothing new in it. Various members of the Select Committee, while we were discussing it in Darjeeling, thought that it would be quite safe to accept it, and I hope that the House will accept it.

May I say one word more? Purely from the drafting point of view it will read awkardly as it is now printed. I propose that it should be accepted in the following form—that after the words "shall be prescribed," two lines from the end of clause 22 (*3*), the following words be inserted, namely:—

"the immovable property excluded as provision towards his maintenance,".

Maulvi ABUL QUASEM: I accept that amendment.

The amended motion was then put and agreed to.

The question that clause 22 as amended stand part of the Bill was put and agreed to.

Clause 23.

Babu JATINDRA NATH BASU: Sir, may I have your leave to move the three amendments, viz., Nos. 525, 527 and 529 together?

Mr. PRESIDENT: Yes.

Babu JATINDRA NATH BASU: I beg to move—

(No. 525) That in clause 23(*1*)(*a1*), lines 1 and 2, the words "on which there is any mortgage, lien or charge" be omitted.

(No. 527) I beg to move that in clause 23(*1*)(*a1*), line 3, for the word "such," the word "any" be substituted.

(No. 529) I also beg to move that in clause 23(*1*)(*a1*), line 3, after the word "charge," the word "thereon" be inserted.

Clause 23 provides as to what should be the contents of an award. The first item is that the award should set out a list of the immovable

properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon. The second item relates to movable property. But here the way in which clause 23(*1*)(*a1*) has been drafted is that the award should set out only a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge. In order to enable the Board and the creditors to ascertain as to what the property of the debtor is and what is available for being applied towards the payment of his debts, it is necessary that all his properties, movable and immovable, should be set out in the award, and the award should also show as to what are the charges on that property. But the clause as drafted has made a distinction between movable and immovable property. I desire to remove that distinction and to place the setting out of movable property on the same basis as that of immovable property. The three amendments, if accepted, will make clause 23(*1*)(*a*) read as follows:—

"A list of the movable properties of the debtor with particulars of any mortgage or lien or charge thereon."

This brings this clause into line with the immediately preceding clause which requires the setting out of a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon. It may be that besides the movable property of the debtor on which there is a lien or charge or mortgage he may have other movable properties. Why should not the award show what all his assets are and what are his debts so that the assets may be availed of in due course for the adjustment of the debts. It is no use keeping back information as to the assets which the form in which this sub-clause now stands will amount to if you pass the clause without amendment. It will mean the keeping back of information of a certain portion of the debtors' assets. I, therefore, move my amendments. They do not introduce anything new.

Babu KHETTER MOHAN RAY: I support the amendments moved by Babu Jatindra Nath Basu. Under clause 11 the applicant has to show all his properties. He has to insert in the application the particulars of his properties, both movable and immovable, including claims due to him, a specification of its value and details of any mortgage. In awarding, the Board should also include a list of all movable properties (there may be very valuable movables) of which accounts will be taken in settling the debt. Therefore, the list of the movable properties of the debtor should include not only the movables on which there is a charge or lien, but also other movables, otherwise it is no use asking the debtor to supply a list of all his properties including the movables. The Board in deciding about his ability to pay, must consider also the value of the movable properties which are in possession of the debtor. For all these reasons I wish to say that sub-clause (*a*)(*1*) should be amended as proposed by Mr. J. N. Basu.

The Hon'ble Khwaja Sir NAZIMUDDIN: It is obvious that the people who have put forward this amendment and those who have supported it do not realise what is the actual state of affairs in a cultivator's house. If they judge a cultivator's house from the standard of a person living in Calcutta and possessing movable properties, then, I am afraid, they are far off the mark. The list of movables will consist perhaps of *lungi*, *hooka* and things like that. If this clause is put in, it will be ridiculous to suggest that with all the movables of a debtor a list of all that should be made out and submitted. There may be exceptional cases; perhaps Mr. Khetter Mohan Ray is thinking of some chairs and tables, but 90 per cent. of the cultivators possess nothing as Maulvi Rajib Uddin Tarafder said the other day. Anybody who goes into the huts of the cultivators will see that there is no room to possess them, and if they do, they have not got anything but a bare floor. What is the good of asking them if they possess any valuable articles. There may be in certain cases jewelleries like silver ornaments and gold ornaments, but they have been mortgaged or pawned and for meeting those cases we have suggested that they should supply a list. Even if, for argument's sake, it is accepted that they possess valuable movable properties, then at the time of the settlement the Board will ask what is the value of their movables and they will have to submit a list of them and if the Board find that a particular person is of such a standard that he will possess some valuable movables, they will ask him to submit a list of them, but in a large number of cases the Board will know definitely that he has no movable property and it is not worth while asking him to submit a list of it. Therefore, it is an absolute waste of time of the Board and unnecessary filing of details which will not help the Board in coming to a settlement. The question of including anything that is valuable and is subject to lien or mortgage is a different one and this has been provided for. I, therefore, oppose the amendments.

The amendment (No. 525) was put and lost.

The amendment (No. 527) was put and lost.

The amendment (No. 529) was put and lost.

Mr. H. P. V. TOWNEND: I beg to move that for clause 23 (*1*) (*b*) the following be substituted, namely:—

"(*b*) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute."

This is intended to meet the objection, put forward by Dr. Sen Gupta in another connection, that the amount of the debt is not always "determined under section 18".

The amendment was put and agreed to.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that for the proviso to clause 23(*1*)(*d*) the following be substituted, namely:—

"Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act."

This is rather an important amendment on the subject on which there was a great deal of discussion and Government at the time accepted the view-point of the majority of the members of the House and agreed to the provision now in the Bill as reported on by the Select Committee. But after further examination it was found that it would be impracticable if the clause was left in the way in which the Select Committee recommended and, therefore, we had been compelled to go back to what was proposed originally in the Bill. The important point in this connection is that if we want amicable settlement between various creditors, then it is necessary that in the order of payment there should be a certain amount of flexibility because the essence of an amicable settlement will lie in the fact that a particular person A may give up 50 per cent. provided he gets prior payment, and a particular person B or C may give up a certain amount of his claim provided he gets preferential treatment, and it may be in the interest of all creditors to pay off one and get a better payment, though they may have to wait. Therefore, it is necessary that this proviso should be omitted, and powers should be left to Government to prescribe by rules in what order the payments should be made. In this connection, Sir, I would like to read a note which justifies the principle on which we are going to make this change.

"The underlying principle of the Bill is the preservation of the cultivator's land and at the same time to provide for a gradual discharge of all his debts. Debts are reduced to the debtor's capacity, and we are concerned with the reduced amounts. The proviso lays down an order of priority giving secured debtors preference over unsecured debtors. I think the proviso is unfair and in certain cases impracticable in operation. The award is, in a sense, analogous to a composition, in which the giving up of a part of their claims by all the creditors is the consideration for each one giving up a part, and accepting the composition in discharge of his whole debt. The scheme of the Bill is that each creditor suffers sacrifice of a part in consideration of the claims of all the creditors being reduced to the debtor's capacity and payment within a reasonable time of his reduced claim. Postponement of any creditor till the whole amount due to another creditor is satisfied may be grossly unfair to the former. Take the following illustration which is by no means fanciful. A debtor has three plots of land. He mortgages one of the three plots to secure a debt due to X. He is indebted also to Y and Z, without security. The surplus income from the three plots available for the payment of debts has, according to the proviso, to be paid to X to the exclusion of Y and Z till the

whole debt of X is discharged. Although X's security is only one plot, yet he will be getting the income of the other plots also. Vis-a-vis the mortgaged plot X may have a higher claim, but vis-a-vis the other two plots he is in the same position as Y and Z under the ordinary law. The proviso gives X preference: this is unfair to Y and Z. If preference be given to X regarding the income of the mortgaged plot and equality with regard to the other two plots, then a separate account will have to be kept of the surplus income attributable to the mortgaged plot after making provision for Government's dues and rents. This is not a practicable proposition. The proviso is thus objectionable on the grounds of unfairness and impracticability. Simultaneous payment of instalments to all the creditors is equitable and reasonable. An award refers to the predefault stage; if default be made, the land cannot be saved and the sale proceeds are liable to be distributed according to the order set out in clause 26. Now what is the ordinary legal position before execution is taken out? The debtor is free to pay all or any of his creditors as he pleases; there is no bar to his discretion. He is not bound to pay a secured creditor in preference to an unsecured creditor. The award deals with a period of time when there has been no default and no execution. If a debtor can at this stage ignore the distinction between a secured and unsecured creditor, why cannot the award do likewise? The distinction or priority has no significance till the security is sought to be realised. Under the Bill security cannot be realised till default is made. Payments directed by the awards have no reference to the realisation of security. When the award is disobeyed, the security becomes liable to be realised, and it is then and not before that the question of priority comes into the picture. Therefore, non-recognition of legal priority in the award is quite consistent with the ordinary law; it is equitable and reasonable because it compensates all the creditors for their sacrifice and does not prefer one to the prejudice of another. The preference given by the proviso would discourage agreement by unsecured creditors and would thus obstruct the smooth working of the scheme in the Bill. A subtle argument may be advanced in support of the proviso and it is this: The income of secured property is also security. Therefore the distribution of such income among the secured and unsecured creditors indifferently is *pro tanto* prejudicial to the former. The short answer is that income becomes security when the creditor takes steps to realise the security, namely, by the appointment of a receiver and not before. Ordinarily, the income remains at the disposal of the debtor and at that stage it is not a security. Hence, at the time of the award, it is not security. In my opinion the proviso is inconsistent with the whole scheme of the Bill and is calculated to obstruct it. Therefore, I think it should be deleted."

Mr. S. M. BOSE: I really do not understand——

Mr. PRESIDENT: One minute, Mr. Bose. I find that there are two or three amendments which can be moved and discussed together at this stage, so I better ask Mr. Sarat Kumar Roy to move his motion.

Mr. SARAT KUMAR ROY: Sir, may I have your permission to move a short-notice amendment to my amendment laid on the table as item No. 533? It is this: Substitute the word "as" for the word "for" occurring in line 3 of my amendment and in line 6 of my amendment, after the words "any amount" and before the words "for which" the following words be inserted, namely—

"other than those specified in the preceding first and second sub-clauses and"

Sir, my amendment then reads as follows:—

"that in clause 23(*1*)(*d*) for the proviso, the following proviso be substituted, namely:—

"Provided that such amount shall be paid in the following order, namely:—

first—any amount payable as arrears of rent;

second—any amount payable to creditors on account of debts which are secured by a mortgage, lien or charge on a property;

third—any amount other than those specified in the preceding first and second sub-clauses and for which a certificate has been issued under the Bengal Public Demands Recovery Act, 1913, or for which a decree has been passed in a Civil Court; and

fourth—any amount payable on account of any other debts."

Mr. PRESIDENT: Yes, you may do so.

Mr. SARAT KUMAR ROY: Thank you, Sir. I move the amendment accordingly.

Sir, it has been said on the floor of this House that the idea underlying this Bill is only to give facility to the debtors of Bengal. Nowhere it has been said that the respective claims as to priority of the different classes of creditors as now subsist under the existing law should be disturbed; and I do not think that such disturbance is either justifiable or is necessary for giving any relief to the debtor. It matters little, so far as the debtor is concerned, whether any particular section of the creditors gets preference over others or not.

But, Sir, I find in the proviso to clause 23(*1*) that the order of precedence as is available for the creditors under the existing law has

been slightly altered. So far as I know, secured creditors have preferential claim over all others except the 16-annas landlords. Even a co-sharer landlord, unless he gets a rent decree, has no preferential claim over that of a mortgage. So, Sir, creditors whose dues are secured by mortgage, charge or lien should come next after those to whom arrears of rent would be due.

No doubt certificates may be issued under the Public Demands Recovery Act, 1913, for arrears of rent. But for those certificates no specific provision need be made. So also certificates may be issued for dues which are declared by statute to be recoverable under the Bengal Public Demands Recovery Act, as arrears rent. For these also I think no special provision need be made, for giving them any preference. But if a certificate be issued for realisation of other dues such as are not enforceable as a charge on immovable property, I fail to understand why such certificate debts should have preference over secured debts. Any amount for the recovery of which only the right, title and interest of the certificate debtor can be sold, should not have any preference over the secured debts.

For this reason, Sir, I suggest that any amount for which a certificate has been issued under the Bengal Public Demands Recovery Act 1913, or for which a decree has been passed in a Civil Court, unless such certificate or decree relates to any debt specified in the previous two sub-clauses, should be paid after secured debts.

So I move.

Babu JATINDRA NATH BASU: I beg to move that in clause 23 (*1*) (*d*), after proviso First (*ii*), insert the following, namely:—

"(*iii*) and any amount due on account of any rate to any municipality under section 167 of the Bengal Municipal Act, 1932 or any other law relating to municipalities in Bengal."

Sir, the proviso as it stands makes provision for the payment to the Local Government of any amount included in a certificate to be issued under the Bengal Public Demands Recovery Act. Sir, there is another charge on property declared by statute, viz., the rates and taxes under the Bengal Municipal Act, 1932, and the Calcutta Municipal Act. In this connection I would call attention to section 167 of the Bengal Municipal Act, 1932, in which it is stated that subject to the prior payment of land revenue and of rent to the landlord, the rates shall be a first charge upon every holding; and section 205 of the Calcutta Municipal Act states that the consolidated rates shall, subject to the prior payment of land revenue to Government, be a first charge upon land and buildings. Sir, if we do not provide for the payment of these rates in priority, there will be a conflict of laws, because there will be one law, viz., the municipal law which will enable the municipality a

creditors to claim the rates payable to them on the basis of the rates being a charge, while under this, viz., the provision regarding distribution to be contained in an award, there will be no such provision and the conflict of laws might lead to difficulties in the administration of the provisions of the Act and might give rise to a great deal of unnecessary litigation. I, therefore, propose that the payment of the charges which have been declared under law to be prior charges should be provided for in an award.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Sir, the Hon'ble Member in charge of the Bill has moved an amendment to clause 23(*1*)(*d*) which runs: "provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act." Mr. Sarat Kumar Roy has moved another amendment which distinctly lays down the order in which the amounts shall be paid, and I believe that Mr. Roy's amendment is supportable at least by me. I do not know what will be the opinion of others who are also taking part in the debate from this side of the House, but I believe the order which has been suggested by Mr. Roy seems to be the best order for the payment of charges out of the property of the debtor. That arrears of rent is the first charge on all property cannot be denied by anyone and my friend suggests that the arrears of rent, whatever may be debt of the debtor, is the first charge on the property and that arrears of rent should be paid first. If by payment of arrears of rent the entire property of the debtor is exhausted, the others will get nothing. This is not wrong in principle, because in all cases the land is enjoyed on condition of payment of rent and rent has to be paid and the rent in its turn goes to the coffers of Government; it may be through first or second or third hand, there being various hands in the middle; but without payment of rent no one is allowed to hold any land in any part of the world. So, the payment of rent ought to be the first item which should be satisfied and the next item in order should be the mortgagee or the secured creditor. I do not know why the Government Bench wants to ignore the existing law and wants to say that the secured creditor should not get any preference over the unsecured creditor. Even a child with practically no knowledge of law knows that a secured creditor is a creditor on the land; on the security of the land the money was lent and why should not that security be respected. Why should we make here a law which will do away with all the existing laws and principles? I do not understand what Government means by saying: "Well, the security is security when the actual dissolution of the property is considered." It means that only when the property is to be sold the question of security comes in. I cannot understand this interpretation of law. Probably the Government will carry this motion, but I believe that it is not right that they should not be guided by commonsense and accepted principles of law. The persons whom we are now

addressing ought to know the ordinary principle of law that when any property is mortgaged, the mortgaged debt must be paid first out of the property if it is sold before any unsecured creditor is paid. Why should there be a difference in the law in this respect? The question is that the Hon'ble Member in charge wants to regulate all these things by framing rules. Could he not in the meantime enquire from any of the lawyers whom Government consults, I mean the Advocate-General and others, as to whether there is any difference between a secured and an unsecured debt under the presnt law? If he had done so, I think the Advocate-General would have told him that the law as it stands makes a distinction between a secured and an unsecured debt and that a secured debt ought to have preference over an unsecured debt beyond all question and beyond all doubt. So I would appeal to the Government bench to consider again this aspect of the question. They may carry their amendment, but they should not abrogate all principles of law, but should get the assistance of their legal advisers to help them when framing the rules. If the Government carry this amendment, the rules should be so framed that they do not in any way interfere with the existing laws and customs of the country. With these observations I wholeheartedly support the amendment of Mr. Sarat Kumar Roy.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I oppose the amendment moved on behalf of Government suggesting the proviso—

> "Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act."

Sir, once again I have to level the charge of unpreparedness on the part of Government in this connection. This measure has been before the Government for quite a long time; it has been discussed in the Select Committee and the members of the Select Committee, we are told, by a majority of votes adopted a certain course, but now the Government of Bengal have come forward with this amendment which is calculated to leave things very vague. Sir, the Hon'ble Member has not disclosed what arrangement he is going to make by the rules in place of the arrangement suggested by the Select Committee. Evidently the Government have not yet made their mind. They have no clear idea as to what they should do, but they only suggest that if you accept the proposal of the Select Committee, the whole object of the Bill will be frustrated. While they realise the weakness, they are not prepared to disclose how they are going to make this measure workable. Sir, instead of letting the House an opportunity to decide whether the arrangement is right or wrong they want the power to themselves to decide. Now, this is neither fair to the House nor to the people. If the Government think that the arrangement, as proposed by the Select Committee, would make the Bill unworkable, it is the clear

duty of the Government of Bengal to drop the measure and bring forward a measure which would be workable. Instead of that straightforward course, they want to pass this measure; and perhaps in their wisdom they will make an arrangement which may not be acceptable to this House or may create great disorder among a large section of the people of the country. Sir, I protest against such an attitude on the part of the Government of Bengal. As has already been pointed out by the previous speakers that in this matter we have to observe certain arrangements in accordance with existing laws. We should not put in any arrangement that is contrary to the existing laws. I am also doubtful whether unless the Government is prepared to have such a different arrangement which conflicts with the existing laws passed by this House, it would be considered valid in Law Courts simply because they pass or they adopt certain arrangements by virtue of their rule-making powers. It is for the lawyers to deal with the matter of which authority, whether by the rule-making power of the Government or otherwise, can take away existing rights vested by the existing laws in the land. In view of that also, if the Government of Bengal do not consider that the arrangement, as suggested by the Select Committee, is a proper one or is likely to frustrate the object of the measure, they should come with definite proposals and have it embodied by the vote of this House in this new measure. That one can understand. But I think this attempt on the part of the Government of Bengal to leave everything vague must be challenged, and I hope the House will reject this amendment.

Babu HEM CHANDRA ROY CHOUDHURI: I rise to oppose the motion moved by the Hon'ble Member. The reasons behind this motion as have been stated by the Hon'ble Member are these. First of all, he wants to impress on the House that if this order of payment be retained, then the unsecured creditor will not be inclined to accept a term which may stipulate reduction of his debt to a great extent because if the secured creditor be paid first, then the unsecured creditor will have to wait for a long time; they will not be tempted to accept the terms offered by the Board. The second argument is this: That it will not be practicable for the Board to keep an account of the income of the secured properties. I think these are the two arguments put forward by the Hon'ble Member in moving his amendment.

As regards the first, I must say that where the unsecured creditor may not get anything, if the secured creditor will have to be paid their principal and a reasonable amount of interest, it will not be any sacrifice for the unsecured creditor to accept any terms offered by the Board. For example, there is a property of a debtor worth Rs. 1,500 and that property is secured for Rs. 1,000 to A. This debt of Rs. 1,000 with interest at the rate of say 5 or 6 per cent. per annum has come to Rs. 1,800. There is an unsecured creditor who has dues to the extent

of Rs. 500. Thus, it will be to the interest of the unsecured creditor to accept any terms offered by the Board if he be paid first. Sir, if an unsecured creditor offer a term that for his dues of Rs. 500 he is ready to accept Rs. 100, if he be paid first, then the Board may be tempted to put off the payment of the dues of the secured creditor. In that case that will be a great injustice on the part of the Board done to the secured creditor because the secured creditor relying on the existing law has advanced his money and no Board or legislature should debar the secured creditor from realising his principal with a reasonable amount of interest. It may be said that he should not be given an exorbitant rate of interest. I fully agree with that, but there is no reason why he should not be paid first in preference to the unsecured creditor. It has been said by the Hon'ble Member that the debtors have option to pay either the secured or unsecured creditor until he is sued. There is no doubt about that. But I would tell the Hon'ble Member that he should not forget that by this legislation he is preventing the secured creditor from suing the debtor. So there is no reason when it is said that a debtor has an option to pay either a secured or unsecured creditor first and hence the secured creditor should wait until the unsecured creditor is paid, when he is ready to accept a very small amount.

Then I come to the second point, *i.e.*, there will be difficulty in keeping an account of the produce of the secured property. Sir, cultivators who will come under the scope of this Bill may have a few acres of land and in almost all cases there is a mortgage on the whole or a substantial portion of the property, so there will be no difficulty in getting an approximate estimate of the annual produce of the plots of land secured to the creditors. Under clause 21 the Board will have to make an estimate of the income of the property of the debtor. Then under section 23 in making an award and reducing the debt the Board will have to make an estimate of the produce of the lands of the debtor. So to make an approximate estimate of the produce of the secured lands there cannot be any difficulty. But if we do away with this order of payment, the difficulty will be this: It may so happen that the existing law will be neglected and for the sake of expediency, for the sake of reducing, for the sake of alluring a second mortgagee to accept a small amount, the Board may give them a preference to those creditors who have the first claim under the existing law. For example, a debtor has got some property and has got three mortgages on this property and also unsecured creditors. If the first mortgagee presses his claim the subsequent mortgagees and unsecured creditors will not get anything under the existing law and hence if the second and third mortgagees and some unsecured creditors be ready to accept any terms, it will not be a sacrifice on their part. So there is no reason behind this proposal that the secured creditors should not be paid first.

As for the illustration given by the Hon'ble Member, I want to make some remarks. The illustration is this: A debtor has got three plots of land, one is mortgaged to X and the other two plots of land are unsecured by any debt. But that debtor has got two other creditors, B and C. Now the debtor has got one secured creditor who is X and other two unsecured creditors B and C. As regards the plots which are not mortgaged, the position of X and of B and C is the same. As regards the plot which has been mortgaged to X, X has got a better claim than that of B and C. The Hon'ble Member suggests that if X be paid first from the income of this unsecured property then a great injustice will be done to the unsecured creditor. I think strictly speaking no injustice will be done, because X has got some security whereas B and C have none. So, strictly speaking, there will not be any injustice, but to take it for granted there will be an injustice, if the whole of the produce of the unsecured plots be given to X, then I think, some provision should have been made by which the secured creditor may get first the income of his secured property. There is no reason why the income of the secured property should go to the unsecured creditor. The Hon'ble Member says that the secured creditors may claim the produce of the secured property only in case where a receiver is appointed and not before that. I admit this is so. This Bill wants to do something which is like the appointment of a receiver. You are transferring all his debts and properties under the control of the Board, leaving no option to the creditors to go to the Law Courts. So there is no reason why the income of the secured property should go to the unsecured creditors. An order of payment has also been prescribed under clause 26 that is to take place after the properties are sold. It is based upon the existing law. If that be so, why should not that order be followed in cases when payments are made amicably? You cannot draw an analogy with a debtor who will not come under the provisions of this Bill because in this case the creditor has the remedy in Civil Court; but in the case where the debts of a debtor come under the provisions of this Bill, the creditor has no remedy in Civil Court: the creditor will have to abide by the award of the Board. So there is no use in saying that the debtor has an option to pay either a secured or an unsecured creditor. What the clause proposes is that first of all the arrears of rent should be paid, and I think Government also agree to the extent that arrears of rent should be paid first. If that be so, what is the harm in retaining in the clause that arrears of rent should be paid first. Next comes the amount included under the Public Demands Recovery Act. I presume that by the rule-making power Government will give the payment of their dues preference. Then comes any amount payable to the creditor on account of properties on which there is any mortgage, lien or charge. Only exception is taken to this, and I think the ground of opposing this is that if one property out of several properties is secured, why should the

income of all the properties go to the secured creditor of one property. To remedy this the Government could have brought an amendment to the effect that the income of a secured property will go to the creditor who has got that security; as regards the income from other properties the Board would have an option. I think there would have been some justification for this, but there is no justification to leave it to the sweet will of Government to prescribe the order in which payment will be made. Any amount payable on account of unsecured debts or a decree passed by a Civil Court will come afterwards. There cannot be any objection to that. One man who has gone to the Civil Court and who has incurred some costs, why should not he be paid before the payment of debts due to a creditor who has not incurred any cost?

(Here the member reached his time-limit, but was allowed to proceed.)

The other day I have given you an instance of the way in which Government proposed to deal with those debts. I have told you that Government want that the principal amount of the secured and unsecured creditor will be paid first and then if anything be left, it will go for the payment of the interest of secured creditors. Such a proposal will shock anybody who has got any knowledge of law. The unsecured creditor was a fool to lend money and under the ordinary law he would not have got anything, so why should he get something before a secured creditor gets a reasonable amount of interest with his principal. With these words I oppose the amendment.

Babu KHETTER MOHAN RAY: For the proviso which has been added to clause 23 by the Select Committee at Darjeeling, I do not claim as an ideal one. There are many defects in the proviso and some of the defects have been pointed out, but those defects may be remedied here. With regard to the first, the proviso says that the amount shall be paid in the following order: Any amount payable for arrears of rent. With regard to this there is no question; nobody questions the priority of rent to all other dues, but with respect to the Government dues it is laid down that any amount due to Local Government can be recovered under the Public Demands Recovery Act. There is a controversy. Why is there a controversy? I think under the law there is no controversy. Government dues other than revenue and arrears of rent are just in the same footing as the ordinary debt. If any sale takes place in execution of a certificate issued under the Bengal Public Demands Recovery Act, 1923, the effect is that the right, title and interest of the judgment-debtor passes away. Similarly, if in execution of a decree, a property or holding is sold, only the right and interest of the judgment-debtor passes. Consequently, they cannot be placed in priority over the other debts. I do not see any reason why the decretal debts and a certificate debt can claim any priority with

respect to other debts and should have no priority over other debts. These are some defects which were not apparent to the Select Committee at the time of making this and should be remedied, Government dues should not be placed over other secured creditors; the secured creditors must have priority over other debts. This can be easily done. I can say that this law will be administered by a body of persons who have got no legal intelligence and unless there are certain rules for the guidance of these people, it will be very difficult for them to make an award. Under these circumstances, I pray that Government should make certain rules which may be embodied in the Bill itself. These rules should not be left to the rule-making power of Government. The Hon'ble Member says that if this proviso stands, it will be unfair and impracticable. I have already pointed out here how it can be remedied. I do not see that there is any unfairness that the secured creditors should have priority. I mean that X in the illustration quoted by the Hon'ble Member may be paid from the income of the land which is mortgaged to him if the entire property is mortgaged to him. In that case he shall be paid first. That is common-sense and that is law which is prevailing in the country and that is the law on which the loan was secured on the security of this property. I do not think there should be any deviation from this.

With these words I should say that the proviso be amended. If the Government like, the proviso may be amended just now so to make it more reasonable and more practicable, apart from taking it under the rule-making power of Government.

Mr. SARAT KUMAR ROY: Sir, I rise to oppose this motion. The object of the amendment seems to be that it is the executive Government who shall have the power of determining the order in which the disbursement of the sale proceeds of a debtor's property shall be made under section 21, and the mover seems to be of opinion that this legislative enactment shall have no provision in it for that purpose. I doubt very much the usefulness of such a proposal like this. Most likely, it will not be within the competency of the executive Government to violate, by its rule-making power, the express provisions of the laws that have been enacted, either by this or other legislative bodies. Unquestionably, if they frame any rules which would be conflicting with the provisions of any statute, they will be regarded as *ultra vires*. So, I think, it would be more prudent to lay down the order of precedence in this statute itself; and in doing so, I think we should be careful not to lay down anything which would be contrary to the express provision of any existing law. I am, therefore, inclined to ask this House not to accept this amendment, although for reasons which I have already discussed when moving my amendment that the proviso to sub-clause 23(*1*)(*d*) should be amended in such a manner as

to bring it in conformity with the provisions of other law in force. And for that purpose I have already moved a motion which is item No. 533, and I there set forth my reasons on the subject.

Mr. H. P. V. TOWNEND: The whole of this is extremely difficult. It is very hard to explain the objections to this proviso on the floor of the House but it is a matter of the utmost importance; so important in my opinion that I advised the Hon'ble Member not to proceed with the Bill if this had to be retained in the Bill as it stands. In my opinion if this proviso remains the Bill becomes absolutely unworkable and we might just as well save our labour and we might just as well save the time that we are giving to it. Various members, objecting to the proposal to omit it, have asked why we should adopt a measure contrary to the existing law, and others have asked why we should deviate from the ordinary law and why we should encroach upon people's rights. But is there any law preventing a man from paying an unsecured creditor at the same time as a secured creditor? Is it necessary under the existing law for a debtor to wait until he has paid off his secured debts before he pays one anna to unsecured creditors? Is it necessary for a debtor to refrain from paying his taxes to the union board until he has paid in full his rent and his debts to secured creditors? The proviso as it stands departs from the existing law. It has been pointed out by one member, in an amendment of which he has given notice, that the case of municipal rates which under the Municipal Act are a charge on the land ranking immediately after rent is not included in the proviso as it stands. That is not the only fault. Earlier in this debate, when clause 2 was under discussion, various members pointed out that the case of labourers to whom wages were due must be considered. Is it necessary under existing law for a labourer to wait for his wages until the rent due to Government and the secured debts owed by his employer have been paid? Is that fair? He might have to wait 10 years. Is it fair again that advances made to a labourer should not be repaid by him until he has repaid all secured debts? Is there any law which compels debtors to withhold payment in such cases? There is no such law. There is absolutely no law of that kind and the proviso as it stands would whittle down the ordinary law and make it impossible for people to pay their just dues. That is a thing which cannot be denied. It is not the amendment but the proviso that is open to the criticism with which I have been dealing.

The Hon'ble Member, when proposing this amendment, read out not a written speech of his own but an authoritative legal opinion given after due consideration; and that legal opinion was to the effect that this clause as it stands——

Mr. SHANTI SEKHARESWAR RAY: Whose opinion is that?

Mr. H. P. V. TOWNEND: It is the opinion of the legal advisers of Government and the hon'ble member knows that it is contrary to procedure for me to say any more than that. That legal opinion says that the proviso is in the opinion of the writer "unfair and, in certain cases, impracticable in operation." These are very strong words but they are the words of a lawyer writing after full consideration of the whole clause. It is well known that Government always give their opinion after consulting good lawyers and it can therefore be stated with confidence that legal opinion is in favour of omitting the proviso. I have already shown that with the proviso everything is going to be made too rigid. Labourers' wages, advances to labourers, municipal rates and dues to the union boards are not provided for. Every one here will agree that provision should be made for payment of arrears of rent at an early stage but there are other dues which demand equal consideration. But, Sir, there is another point. The proviso would prevent an award from being made under the Bill, if it provides for any departure from the order of payment laid down, even though everybody concerned agrees to it. A secured creditor may say "that unsecured creditor is poor and needs the money at once; let him be paid first." A landlord may similarly be willing to wait for a few years so that a widow may be paid her dues first and so on. But this is not allowed by the proviso. No scope for conciliation is allowed and a Board will find it extremely difficult to do anything whatever by way of bringing parties to an agreement, so long as this proviso remains.

There is another point. We have argued throughout on the lines that we expect the Bill to work because debt conciliation has been successful in the Central Provinces, and it has been also successful at Chandpur, with voluntary agreement. Can it be said that the people working the Central Provinces Act had to work with any such proviso as this or that any order of payment was laid down as necessary in their awards? There was no such thing. There was no such provision in operation at Chandpur either. Therefore when we argue that we expect success for this scheme because of what happened at Chandpur and in the Central Provinces, we cannot possibly say that we expect it so long as this proviso is here in the Bill. Sir, if we retain the proviso, we are going to throw all experience to the winds and are simply going to trust to luck. Every member opposing this amendment has put forward as his reason not any argument as to how the Bill works but merely that we must safeguard this man or that. So that it is going to be so rigid that it will not work at all, and that is the position towards which the critics of the Hon'ble Member are gravitating.

Then I would point out this: would the proviso assist in leading to amicable agreement at all? In the first place, would it be possible to get a secured creditor to agree to any terms whatsoever? He would

know that he must be paid first of all, before any unsecured creditor; he would know that, according to this proviso, even if he has got the mortgage of only one bigha of land and the debtor owns 15 bighas, even then, he can claim to be repaid from the whole of the 15 bighas before any of the unsecured creditors gets anything. The House is going to extend this mortgage from the one bigha to the 15 bighas by this proviso; so that the creditor secured by a mortgage on one-fifteenth of the land would be given, by this proviso, a first charge on the whole property after the rent. Is that just and fair? And, in any case, why should any one think that such a creditor will agree to cut down his claim? He would be nothing but a fool if he did so. Next, let us turn to the unsecured creditor. He would have no motive to come to any agreement; he knows that he cannot get even one anna until the secured creditors have been paid in full, so what would he profit by coming under the award? If he does not come under the award, he can bring a suit and has some chance of getting some money and, if only a portion of the land is mortgaged, he has got a very good chance of getting something out of the debtor: if he comes under the award he waits till others are paid. Therefore he would never come to any amicable settlement and he would, on the contrary, try his best to prevent any one else from agreeing to any amicable settlement. So it appears that everybody concerned (except the debtor) would be averse from having a settlement. Will the Bill work in that case?

Now, let me take the general principle of the Bill. The opposition has argued in connection with clause 20 that it is unjust to make a man wait for ten or twenty years. Under this proviso, certain creditors would have to wait for years till the mortgagees are paid in full. It is quite possible that the unsecured creditor who accepts fair offers would have to wait just as long as creditors under clause 20 who refused to accept fair offers. Does not anybody think that this is unfair? At any rate critics of this amendment thought it unfair when Government put forward something which they interpreted like that; it seems that whatever Government propose is objectionable in their eyes, whatever be the merits.

Suppose a man has a second mortgage on a part of the debtor's land and the proceeds from the yield of the mortgaged land is not sufficient even to pay the first mortgagee; this second mortgagee, and yet a third mortgagee, perhaps, could come in and take the yield from the whole of the property, in satisfaction of his worthless mortgage. For all practical purposes such second and third mortgagees are unsecured creditors: but the proviso would put them in the position of first mortgagees. Is that not unjust and is not wrong under the existing law? There is no justification whatever for it.

Various other arguments against the amendment have been put forward but I do not know that I need deal with them. I notice

however that several members have suggested that this proviso would work if amended in various different ways; but, Sir, no such amendment is now before the House. We too have failed to draft a suitable amendment which would retain the proviso and avoid practical working difficulties. It was not without a lot of hesitation that Government decided that this proviso could not stand. Attempts were made to alter it, to keep it in such an altered form that it would not miserably fail: but they proved useless. When this was so, I can assert confidently that no amendment could possibly be drafted now, Sir, on the floor of the House which would secure the end in view. I do not know that I may go into the details fully. No suggestion has been made up till now which would, if accepted, enable the Bill to be worked properly; and that is why we consider that this matter should be left to rules. We want labourers' wages to be paid quickly, we want advances to be repaid quickly and we must insist on rent being paid at a very early stage. These things are absolutely essential for the working of the Bill; and we must see too that no secured creditor gets treated unfairly. But actually these things will have to be dealt with in the awards in different fashions to suit different facts. I am not at all in favour, therefore, of any rigid proviso. We suggest that difficulties may be provided for under rules to be framed under the Act, that if hard cases turn up we can deal with them under a rule-making power. The rules would have to be phrased so as to allow wide discretion to Boards: I feel perfectly certain that the rules could safeguard the interests of landlords, etc., but I do not believe that they can go in detail.

I do not think that I need say anything more. The proviso is completely unworkable as it stands and there is no time to re-draft it in a workable form, even if we knew on what lines to re-draft it.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: I am surprised to hear for the first time from Mr. Townend that this proviso has been declared by the law officers of Government to be unworkable, unfair and impracticable. At Darjeeling, the Select Committee went into this question very carefully and I can say that we accepted this proviso of priority unanimously without any opposition. There was no question of legal opinion raised then and though the legal authorities of Government were there; nor have we been told that there would be anything that makes this Bill unworkable if this proviso were kept there. Sir, Mr. Townend says that it is not possible at the present moment to make any change. In that case, Sir, I would request you to postpone this matter till to-morrow so that it may be further considered and changed. This practice has been followed in this Council. There would be no difficulty if Mr. Townend approves it. Let us see what he says. If he is anxious, to do justice, he should not take the plea of shortness of time. This can be managed

easily. The main objection that we find from the speech of Mr. Townend is that if this proviso remains as it is, the secured or the mortgage debts would be paid in full at the sacrifice of unsecured debts. But, Sir, one thing should be considered. There is difference between secured and unsecured debts. A secured debt claims priority in the eye of law at present. Secured debts are paid in priority to unsecured debts. When a man lends money in an unsecured way, he knows full well that he will be paid after the secured debts have been paid. So an unsecured debtor cannot reasonably demand priority over secured ones. However, that question can be solved if an amendment to the effect that secured debts will be paid out of the property so mortgaged be brought as a short-notice amendment and it may solve to a certain extent the difficulty of Government.

The Government also wants to bring the purport of this clause under their rule-making power, but in that case also they will have to settle the priority question, why not do it now and here? What is the difficulty; I do not make out; after all, if they have to embody that provision in the form of a rule, which will have the effect of law why this should be postponed? They have enough time to make up their minds; no further time can be reasonably expected for this small matter. Government do not like to avoid the question of priority, but they want it to be not in the statute, but in a rule to be framed under their rule-making power. If Government are not satisfied with the present arrangements, let them say what arrangements they want to make. Let them clearly explain what they wish to do. Mr. Townend, when he rose to reply, said that it was very difficult to explain and he did not like to disclose what was the arrangement that was going on in the mind of Government. But, Sir, I, for my part, cannot find what the difficulty; I do not make out; after all, if they have to embody ment, let them come forward with their proposal, and I think, Sir, you would also permit some time to consider this question. Now they cannot unreasonably shake off this for want of time. And as I have suggested, perhaps a short amendment on the question of mortgaged secured debts will satisfy everybody. With these words, Sir, I oppose the amendment of Sir Nazimuddin.

The motion of the Hon'ble Khwaja Sir Nazimuddin being put, a division was taken with the following result:—

AYES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emadeddin.
Bal, Babu Lalit Kumar.
Banerji, Rai Bahadur Keshab Chandra.
Barma, Babu Premhari.
Bazir Uddin, Khan Sahib Maulvi Mohammad.
Bose, Mr. S.
Chakraborty, Babu Nihar Chandra.
Chanda, Mr. Aparna Kumar.
Chaudhuri, Khan Bahadur Maulvi Nazzar Rahman.
Chaudhuri, Maulvi Syed Osman Haider.
Chowdhury, Maulvi Abdul Ghani.
Cooper, Mr. G. G.
Dunlop, Mr. K. W. B.
Faroqui, the Hon'ble Nawab K. G. M., of Ratnagar.
Fazlullah, Maulvi Muhammad.
Gilchrist, Mr. R. N., C.I.E.

Gladding, Mr. D.
Graham, Mr. H.
Guha, Mr. P. N.
Hakim, Maulvi Abdul.
Haldar, Mr. S. K.
Hogg, Mr. G. P.
Hooper, Mr. S. G.
Hussain, Maulvi Muhammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur.
Rahman, Maulvi Aziaur.
Ray, Babu Nagendra Narayan.
Ray Choudhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Ross, Mr. J. B.
Rozburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sen, Rai Bahadur Akshoy Kumar.
Singha, Babu Kshetra Nath.
Stevens, Mr. M. S. E.
Tarafder, Maulvi Rajib Uddin.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.
Walker, Mr. J. R.
Woodhead, the Hon'ble Sir John.
Wordsworth, Mr. W. C.

NOES.

Basu, Babu Jatindra Nath.
Bose, Mr. S. M.
Chaudhuri Babu Kishori Mohan.
Ghose, Dr. Amulya Ratan.
Hossain, Nawab Musharruf, Khan Bahadur.
Maiti, Mr. R.
Mittra, Babu Sarat Chandra.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Nag, Babu Deb Lal.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Roy, Babu Khetter Mohan.
Ray, Mr. Shanti Shekhareswar.
Ray, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Ray Choudhuri, Babu Nem Chandra.
Sahana, Rai Bahadur Satya Kinkar.
Singh, Srijut Taj Bahadur.
Sinha, Raja Bahadur Bhupendra Narayan, of Raghipur.

The Ayes being 54 and the Noes 18, the amendment was carried.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 23(*1*)(*c*) the following be substituted, namely:—

"(*c*) the rate of interest, if any, payable on each amount referred to in clause (*c*)."

Sir, this is really a drafting amendment. The expression "in the form of equated payments" is really out of place in this sub-clause, because it is not mentioned anywhere else in the Bill. A rate of interest will not always be payable on amounts covered by an award, hence we have used the words "if any." The concluding words "or an order is passed under clause (*a*) of sub-section (*1*) of section 21 for the sale of the property" no longer apply in view of various changes made in the Bill.

The amendment was then put and agreed to.

Mr. SARAT KUMAR ROY: I beg to move that in clause 23(*1*)(*c*), in line 1, after the words "the rate of interest," the words "which shall not be less than six per cent. per annum" be inserted.

Sir, we ought to remember that in making settlement of debts, the Board has been given power to cut down all interests that had accrued due; and after an award is made, the creditors shall not get back their

principal money for a pretty long time which may extend to even 20 years. Sir, in cases where a decree is made in the Civil Court for payment of any money, this decree provides for interest, the rate of which seldom comes below six per cent. Besides, Sir, it should be considered that the creditors may also have to meet their liabilities and most likely they shall have to discharge such liabilities with interest. Hence, it is but meet and proper to fix a minimum for the rate of such interest which the Board shall allow for sums payable under their award, and for the reason I have just discussed, I think such rates should not be less than six per cent.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment, because the provision which Mr. Sarat Kumar Roy has proposed is not correct. To begin with, in all cases the interest will not be reduced. Further, you cannot tell what the interest will be; it will depend mostly on the nature of the agreement arrived at. There may be justification in some cases to give more than six per cent., while in some cases it may be less than six per cent. After all, as I have said, it will depend on the essence of the agreement arrived at amicably. Therefore, I think it is better to leave it to the discretion of the Board. I, therefore, oppose the amendment.

The amendment was then put and lost.

Babu KHETTER MOHAN RAY: I beg to move that in clause 23(2), line 1, after the word "notice," the words "by registered post" be inserted.

Sir, my reason is this. Clause 23(2) provides—"at a place and time of which notice shall be given to the parties in the prescribed manner." It is not known how the notice is to be given. I think that there should be no ambiguity whatever as to the manner of serving the notice, and I have therefore suggested in my amendment that the notice should be given by rigestered post to the party concerned so as to ensure the service of notice upon the party. When the parties served with such notice do not care to attend, the Board may pass any award which will be binding on the parties. I do not know how the Government will do it by its rule-making power; but I submit that there should be a fixed provision and that such notice should be served by registered post. For this reason I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment on the ground that it is quite conceivable that there may be a Board where there is no post office and that there may be cases where all the creditors and debtors are all present before the Board and the notice can be served on the parties in the presence of the members of the Board. If it is not prescribed by the rules they will be able to

do it in the best possible method. There is no reason to suppose that anybody would be prejudiced owing to the manner of the service of the notice. I, therefore, oppose this amendment.

The amendment was then put and lost.

Babu KHETTER MOHAN RAY: I beg to move that after clause 23, the following proviso be added, namely—

"Provided that if the debtor makes defaults in respect of the payment of two successive instalments under any award, the award shall stand cancelled. The parties then shall be relegated to the former position and the decision and decree of the Civil Court will be revived and the creditors shall be entitled to sue for the recovery of their dues as if no awards have been made."

Sir, in moving this amendment my object is to draw pointed attention to the fact that the debtor will come for relief to the Board for being allowed easy instalments. If the debtor does not care to make regular payments and the creditor is forced to go to the Certificate Officer every time the default is made, it will be very harassing to the creditor. It may be, Sir, that the payment of the debt may be spread over, say, ten years and there may be ten equated instalments spread over this ten years period. In order to ensure the payment of regular instalments some such provision should be made that if the debtor fails to make payment of two successive instalments, the award will stand cancelled and the parties will be able to resort to the normal procedure of Civil Courts. In such a case the debtor will be very careful to make regular payments and the creditor will not have to apply to the Certificate Officer for realisation of his instalments. If this provision be inserted, I think much of the certificate proceedings will be avoided. This is a salutary principle which is generally followed by the Civil Courts and whenever any Civil Court decree for instalment is passed, the Court is very careful to make such a provision in the decree that in the event of default of two successive instalments the entire amount will become due and the decree-holder is entitled to proceed for the recovery of the amount decreed. I submit that similar provision should be made here. The debtor gets much relief in regard to the scaling down of debts and he should take care in making regular payments. Therefore I think this proviso ought to be added to clause 23.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment and the reasons are obvious. Firstly, the provisions of clause 25 are quite sufficient to carry out the purpose which the mover of this amendment has in view. Secondly, he has suggested that if there is a failure in the payment of two successive instalments, then the award should be cancelled. But I would give him a concrete

example. Suppose, Sir, we take the case of West Bengal, especially Burdwan, excluding the irrigated area. For two successive years there has been practically a total failure of crops. Can anybody in such circumstance insist on equated payments when there has been practically twelve annas failure of crops? The people have not got any money to pay. Therefore, to make it a rigid rule that on failure of payment of two successive instalments, irrespective of all considerations whatever, the award should be cancelled is grossly unfair and unjust. Supposing, Sir, in the Comilla district from which the mover comes, there has been flood for two successive years, practically damaging all the crops, how can we expect the cultivators to pay instalments from the sale of their agricultural products? Therefore, we have provided that when there is failure of payment without any adequate reason, the award will be cancelled, and, moreover, the penalties which we have provided under clause 25 are very severe, viz., that the entire property of the debtor will be sold up to meet the award that has been made. In view of the above I oppose the amendment.

The amendment was then put and lost.

The question that clause 23, as amended, stand part of the Bill was put and agreed to.

Mr. PRESIDENT: Order, order. The Council stands adjourned till to-morrow at 10-30 a.m.

Adjournment.

The Council was then adjourned till 10-30 a.m. on Saturday, the 14th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

The Council met in the Council Chamber in the Council House, Calcutta, on Saturday, the 14th December, 1935, at 10-30 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the four Hon'ble Members of the Executive Council, two Hon'ble Ministers (the Hon'ble Khan Bahadur M. AZIZUL HAQUE being absent) and 70 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

(Discussion on the Bengal Agricultural Debtors Bill, 1935, was resumed.)

Clause 23A.

Mr. P. BANERJI: Sir, I beg to move that clause 23A be omitted.

Sir, I fail to understand why this special provision must be made in the Bill for arrears of rent. The Hon'ble Member is very keen to give some relief to the tenants, and I, therefore, fail to understand why arrears of rent should be excluded. In this clause, he suggests that a creditor to whom any amount is due under the award may pay into court the requisite amount to prevent sale, and thereupon the amount so paid, together with interest at the prescribed rate, which shall not exceed 12 per cent. per annum, shall be included by the Board in the award in accordance with rules made under this Act, as additional amount due to such creditor, and such amount shall take priority of every other debt payable under the award. Sir, I cannot understand why a creditor will at all come to the rescue of the property by paying the money, if he is only to be entitled to an amount which he has paid, and when that portion of his dues only will have priority. I fail to understand how a reasonable man can expect another person to put in his money, not for anything else, but simply for getting back that

money at long last, and after a lot of difficulty has been experienced. He also suggests that for arrears of rent, the provision of section 171 of the Bengal Tenancy Act shall not apply. Under section 171 of the Bengal Tenancy Act, a person can be expected to come forward and deposit money because if he does so, he will be entitled to something like a mortgage with priority. Here, Sir, he will have nothing of the kind, and I, therefore, fail to see any reason whatsoever why a person should take any interest in the matter. The Hon'ble Member cannot expect any person to deposit money only to prevent sale. Therefore, there is no ground on which this provision can stand, and it should be deleted altogether. With these words, Sir, I move my amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to oppose the motion moved by Mr. P. Banerji. Mr. Banerji's contention is that there will be no incentive to deposit the rent to prevent a sale, because under the Bengal Tenancy Act, if a person deposits money to stop a sale he gets interest at 12 per cent. over and above various other advantages. Here, the reason why this has been provided is to stop an award being set aside and the holding being sold out for arrears of rent. It may be in the interest of anyone of those who will be receiving payments under the award to deposit the money for arrears of rent to prevent the sale of the holding, thereby ensuring the equated payments of his dues. Therefore, Sir, it will be a sufficient incentive for the holders of an award, if they so want, to pay the money in and prevent the selling up of the holding, and it is for that reason, I think, that a clause like this is very necessary. Otherwise, it may happen that after all the trouble that has been taken for settling a debt and fixing equated payments, the holding may be sold out for arrears of rent, thereby cancelling the award that has been made, and putting the creditors at a great disadvantage. This clause is, therefore, very necessary to prevent the award being made useless.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 23A, the following be substituted, namely:—

23A. Notwithstanding anything contained in this or any other Act—

(*a*) if any rent due for any land mentioned in the list referred to in clause (*a*) of sub-section (*1*) of section 23 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;

(*b*) if any land referred to in clause (*a*) is advertised for sale in execution of a decree, or of a certificate under the Bengal

Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve per centum per annum, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

As regards this amendment, Sir, the first part of it is a purely drafting amendment. It has been suggested that clause (*a*), as it stands in the Bill, is not very clear. The intention was that, if any rent fell into arrears after an award had been passed, the landlord could take action, but the wording does not make that clear and might be thought to refer to rent which fell due after the application and before the award.

Regarding sub-clause (*b*), it would not, as it stands, prevent the use of section 171 of the Bengal Tenancy Act either by a creditor under the award or by any other person interested; and, if once a creditor or any other person took possession of the land under sub-section (*c*) of section 171 of the Bengal Tenancy Act, it would practically mean that the award would come to an end and that it would be impossible for the debtor to pay his debts. Therefore the idea is that, instead of people being allowed to use section 171 of the Bengal Tenancy Act, they should use this sub-clause. This sub-clause is the same as section 171 of the Bengal Tenancy Act, with the one exception, that the person paying the money cannot take possession of the land. Instead of that, his interests are safeguarded by an entry in the award giving him priority over other creditors in respect of the amount paid by him. If he pays the rent, etc., to save the land, the amount paid by him will be collected for him through the machinery provided in this Bill.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I rise to speak a few words on this motion. It has been said by Mr. Townend that the provision of section 171 of the Bengal Tenancy Act is not made applicable in a case where a land has been advertised for sale in execution of a decree or of a certificate, in so far as taking possession of the tenure or holding is concerned by depositing the amount for the reason that if that is not done, the award given by the Board will fall through May I draw his attention to the fact that if a person finds that he would not get possession of the tenure or holding by depositing the money, he will not do so, and in that case, if the tenure or the holding is sold

up, I do not know how the ward made by the Board will subsist. Therefore, it is in the interests of both the debtor and the creditor that the property should be kept intact, and if that is so, I think some such provision should be made as will allure the creditor to deposit the money and save the property from being sold out. But if this stringent provision is kept intact, I think that would not induce a creditor to deposit the money for preventing a sale. No prudent man will be prepared to deposit the money to prevent a sale; he will rather prefer to have the property sold out so that he may purchase it. In that case, he will get the property in his possession, but by depositing the money he will not get any benefit. His claim for repayment of the money deposited will only have priority over other demands and that is not a sufficient inducement for the creditor to deposit the money to save the property being sold out. Therefore, Sir, the insertion of such a clause as this will not serve any purpose. I do not know what harm is there if section 171 of the Bengal Tenancy Act is made applicable. In that case, the creditor will get possession only up to the period which may be necessary for getting the money deposited by him out of the property, and after that period is over, the property will come back to the debtor, when the certificate officer will be entitled to proceed with the award. Otherwise, Sir, nobody will be inclined to deposit the money and the object of this clause will be totally frustrated. On these grounds, Sir, I oppose the motion.

Babu KHETTER MOHAN RAY: Sir, undoubtedly the amendment is more explicit than the Bill clause as amended by the Select Committee, as it has been made clear that any person whose interests are affected by the sale, will be able to deposit the money in order to save the tenure or holding from sale. This is very explicit. But the question is whether the persons affected by the sale will include secured creditors only or both secured and unsecured creditors. Ordinarily, Sir, an unsecured creditor is not entitled to deposit the money. He is not considered to be a person whose rights are affected by the sale. Therefore, I should like to add that "any person including the unsecured creditor whose interests are affected by the sale .....," because that would be more explicit still and will avoid any ambiguity whatsoever. An unsecured creditor is not considered to be a person affected by the sale within the meaning of section 171 of the Bengal Tenancy Act, and in the Bill clause it is specially mentioned that "any creditor to whom any amount is due under such an award may pay into the Court....." and here it is "persons whose interests are affected by such sale." That is all right, Sir, but in order to make it still more explicit, I put it to the Hon'ble Member and to Mr. Townend to consider whether it would not be advisable to add the expression "including the unsecured creditor." That will remove any ambiguity whatsoever in respect to it.

In this connection, Sir, I should also like to draw the attention of the House to the other amendments Nos. 559-563, that are likely to be moved. I raise this question here to draw the attention of the House to the fact that there is nowhere provided in this Bill what will be the effect of a sale for arrears of rent, whether it will be free from all encumbrances as in the Bengal Tenancy Act or whether it will be free from encumbrances other than those mentioned in the award. Suppose, a holding having an under-*raiyati* or occupancy right is sold out. In that case, the under-*raiyat* will be considered an encumbrance under the law. Under section 167 of the Bengal Tenancy Act, by serving notice, when a tenure is sold out for arrears of rent, it becomes free from all its encumbrances. But after having gone through this Bill very carefully, I have not been able to find anything to indicate that sale for arrears of rent under the provisions of this Bill will be free from encumbrances. This has got to be made clear, and if this is done, I have no objection to accepting the amendment which has been moved just now.

Dr. NARESH CHANDRA SEN GUPTA: Sir, so far as the amendment is concerned, I do not find any reason for taking any objection to it. Mr. Hem Chandra Roy Choudhuri thinks that section 171 of the Bengal Tenancy Act ought to apply. In that case, Sir, the whole arrangement in regard to the award would be upset. If one of the creditors pays the moneys and gets possession of the land under section 171 of the Bengal Tenancy Act until his debts are paid in full, the Board will simply have to hold up its hands and do nothing. Therefore, section 171 cannot possibly apply. But, I think, there is some force in the argument of Mr. Khetter Mohan Ray. Although section 171 does not apply in this case, the expression "ordinarily, any person whose interests are affected" would include a creditor under this clause, unlike section 171, who has given an unsecured debt. Under section 171, an unsecured debt has no claim on the land, but when the matter is before a Board which is dealing with the entire debts of a debtor, and also with all his assets, for giving an award, even the unsecured creditor has an interest, and therefore it might be said that "a person whose interests are affected" is a correct expression, though I think something like "any creditor or other persons whose interests are affected" would remove all doubts. Sir, my objection, however, is to clause (*a*). I have no difference with the Hon'ble Member in respect of the purpose of clause (*a*), but what I want to say is that that purpose has not been adequately served either by this clause (*a*) or by the Bill clause, as amended by the Select Committee. It says, "if any rent due for a land mentioned in the list referred to in clause (*a*) of sub-section (1) of section 23, is in arrears"—presumably after the application has been made—"the landlord may include the amount of arrears of rent payable under such award in a suit for the recovery

of arrears of rent of such land." Now, that leaves many things out. Suppose, an application has been on the 1st of Baisakh of next year, that is, in April, 1936, and that application is not disposed of before three years. In the meantime, the rent falls into arrears. Under this clause, for the rent that falls into arrears, it becomes payable after April, 1936. For that the landlord will be entitled to sue, and in the suit he will be entitled to include the previous arrears. But under this clause as it stands he will be able to include the amount of arrears of rent payable under such award, that is to say, until an award is made. This is very ambiguous. I would, therefore, suggest an amendment of which I have given a copy to the Hon'ble Member, and for which I have also given notice. It should be amended in the following way: "Where after an application has been filed, under section 9, in respect of the debts of a debtor, the landlord institutes a suit against such debtor for arrears of rent falling due after the date of such application, in respect of any land included therein, the landlord shall be entitled to include in such a suit a claim for all previous arrears also in respect of the same rents which have been included in such an application, or if when an award has been made, in respect of such previous arrears, that is for the total amount due to him under such award." The expression "total amount" is necessary, Sir, because the landlord may include in a suit for recovery of such arrears, the amount of arrears of rent payable under such award. By the award, it might be that the rent was payable in instalments spread over three years. The clause is capable of the interpretation that he will be entitled to sue for the instalments which has fallen due under the award, though the object of the Hon'ble Member, if I understand him correctly, is, that in such a case, the total amount due to him under the award should be included in the suit. I submit, Sir, this makes the intention quite clear that when a suit is brought for rent, which has fallen due after an application, in that suit, the landlord will be entitled to include all the previous arrears which have been included in the application, and if in the meantime there has been an award, he will be entitled to include in it not the whole arrears due, but only the total arrears as settled under the award. There is no difference in substance between the two, but I think this makes the position clear.

Babu KHETTER MOHAN RAY: May I refer you to clause 26 of the Bill? It refers to sale. You will find that the landlord is entitled to have preference.

Dr. NARESH CHANDRA SEN GUPTA: I am trying to make explicit only what is intended by the clause.

Maulvi ABDUL HAKIM: Sir, I have got three amendments, but 551 and 553 are analogous.

Mr. PRESIDENT: There are three amendments in your name; you can move them all together and make one speech.

Maulvi ABDUL HAKIM: Sir, I beg to move that clause 23A(*a*) be omitted.

I also move that in clause 23A(*a*), line 3, for the word "may" the words "shall not" be substituted.

I also beg to move that in clause 23A(*b*), line 1, after the word "land," the words "referred to in clause (*a*)" be omitted and the words "mentioned in the list referred to in clause (*a*) of sub-section (*1*) of section 23" be inserted.

I move these amendments for the simple reason that the clause will be highly injurious to the interests of tenants. If this clause is retained in the Bill, the tenants will lose the advantage of paying their arrear rent in instalments under an award. When rents will always be held to be the first charge under an award, there is no just reason whatsoever for including the arrear rent payable by an award into a subsequent suit for arrears of rent fallen due after the award. It is a decided fact that the debtors of the co-operative societies have been excluded from the scope of this Bill: over and above that if this clause is retained in the Bill, the agricultural debtors would practically get no benefit from this enactment. It appears that the framer of this Bill was good enough not to make such a provision in the original Bill. This provision has been inserted by the landlord members of the Select Committee and this has been done purposely for depriving the indebted *raiyats* from paying their heavy arrear rent by instalments. I am giving an example to show how a debtor would suffer a heavy loss by this provision. Suppose a debtor has arrears of rent to the extent of Rs. 100; he has also other debts to the extent of Rs. 800 including interest. Now, the Debt Conciliation Board settles his debt to an amount of Rs. 500 and the debtor gets twenty instalments to be paid in equal annual instalments. Then there was a failure of crop next year and the debtor was unable to pay not only his current rent, but also his first instalment of Rs. 25 under the award. Then at the end of the year the landlord brings a suit for arrears of rent for that year including the arrears of rent payable under an award and gets a decree, and if the landlord executes the decree the whole holding of the debtor will be put up to sale for arrears of rent and if even the creditor to whom an amount is due under the award whose condition is already impecunious is unable to pay up this heavy decretal amount and the whole holding is put up to auction sale, then both the creditor as well as the debtor shall be deprived from getting any benefit from the provisions of this Act which is meant for relieving the debtors as well as the creditors. There is a provision under section 25 that the certificate officer may allow time to the debtor if there is a failure of crop.

If the debtor could get one year's time and could get good crop in the year next after the year of failure of crop, he might pay that year's rent as well as the first instalment of the ward which covers Rs. 25 and thus he could pay both his landlord as well as any creditor and thereby could save the holding from being sold. There is another disadvantage on the part of the debtor. If the arrear rent payable by an award is included in a subsequent suit for arrear of rent the landlord will undoubtedly bring the suit with compensation which is generally twenty-five rupees per hundred rupees of rent. There is no provision in the Bengal Tenancy Act to pay outarrear rents by instalments, and it is in this Bill only that such a provision was fortunately made by the framer of the original Bill, but alas, the cold atmosphere of Darjeeling has deprived us from this advantage. Sir, because tenants' rates of rents are already exorbitant and because the small amount of average revenue due to Government from the landlord for the said holding which has been sold for the said arrears of rent has already been paid by the landlord, the advantage of paying this arrear of rent by instalments under this award should not be snatched away by the landlord by means of a rent suit instituted after the award. In my opinion this clause as well as clause 27 baffles the real purpose for which this Bill is going to be enacted. The agriculturists will suffer another hardship if this clause is retained in the Bill. When the arrear rents will be considered a debt and will be included in an award, no compensation will be calculated upon this arrear rent, but if this arrear rent payable under an award is subsequently included in a suit for arrear of rent an amount of compensation at the rate of 25 per cent. on the arrear rent will also be claimed by the landlord. This clause if retained in the Bill as it is will be highly detrimental to the interests of the tenants.

On the above grounds I commend my motions to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: I rise to oppose the amendments that have been moved by Maulvi Abdul Hakim. To begin with, the example he has quoted, I think, is not correct. Over and above that, if there is a failure of crops, then the cultivator can get relief by postponing all payments under the award. It is, therefore, the question of rent that is the only one left and that is an item which I think the tenant should be in a position to pay if he has got nothing to pay towards his debts. Therefore, I maintain that it is absolutely essential in the interests of the tenants. It is wrong to suggest that the tenants can get no benefit. It does not matter what Bill you bring and what relief you give them if you allow the tenants to fall into arrears as regards the payment of rent, it will mean that ultimately they will be in the same position in which they are to-day. The

main object of the provision is to give them facility so that they may be in a position to pay current rent regularly. Most of their present troubles are due to their having allowed the rent to fall into arrears.

Maulvi ABDUL HAKIM: If there is a failure of crop, how can they pay their rent?

The Hon'ble Khwaja Sir NAZIMUDDIN: Even if there is a failure of crops, there is never a total failure of crops; in Burdwan where there has been an unprecedented failure of crops, even there the tenants got a four annas crop; that supplemented by his own labour and any relief that he gets ought to enable him to pay his current rent. It is for his own protection and not for the interest of the *zemindars*; it is in his interests absolutely that he should keep up to the current year as regards payment of rent. Then and then only he can keep his head above water and not get into difficulty again. Therefore, I submit that it is entirely in the interest of the tenants that we are compelling them to pay up their current rents. Therefore, I think there is no reason why this clause should be omitted.

As far as Dr. Sen Gupta's amendment is concerned and the remarks that he has made, I am afraid there has been some misunderstanding on his part. In clause 23A(*1*) he refers to the application stage; as a matter of fact it refers to the award stage, that is to say, any rent falling into arrear after an award is made. If a suit is filed by a landlord, he should be able to include arrears of rent in it. If one followed the trend of Maulvi Abdul Hakim's argument, he would think that after an award when equated payments have been fixed for the arrear rent and then there is a default on the part of the tenant for the rent, a suit can be filed. That is one difficulty and the second point is that this would go against the principle of clauses 28 and 29 which are of very great importance and under which no suit regarding any debt covered by the application should be instituted until the Board had disposed of the application. There might be some point in the proposal if the Board took several years in the disposal of an application, but most likely the application would take only a few months to dispose of. The interests of the landlords are protected sufficiently in other ways. Therefore, if we accept Dr. Sen Gupta's amendment, it will mean this: it will enable the landlord to sue for arrears of rent for which equated payments have been made. This is not desirable. Once a man makes an application, he cannot be sued for arrears of rent. Therefore, I hope Dr. Naresh Chandra Sen Gupta will not press for his amendment.

Dr. NARESH CHANDRA SEN GUPTA: May I explain the matter, Sir?

Mr. PRESIDENT: Well, I cannot allow you to make another speech, but if you have any question to put to the Hon'ble Member I may allow you to do so.

Dr. NARESH CHANDRA SEN GUPTA: With regard to the observations made by the Hon'ble Member that the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award, the arrears of rent include all the instalments, can it mean all the instalments of arrears that are payable?

The Hon'ble Khwaja Sir NAZIMUDDIN: Yes.

Dr. NARESH CHANDRA SEN GUPTA: Therefore under clause 23(*1*), if the landlord sues for arrears of rent after the award is made, he can include the whole amount awarded before. In the meantime, what is his remedy with regard to the arrears which have fallen due after the application if the award is held up for three years?

The Hon'ble Khwaja Sir NAZIMUDDIN: So far as the arrears of rent between the application and the determination stages are concerned, they will be included.

Dr. NARESH CHANDRA SEN GUPTA: But not at the award stage. The determination may be a year before the award.

The amendment of Dr. Naresh Chandra Sen Gupta was put and lost.

The first amendment of Maulvi Abdul Hakim being put, a division was taken with the following result:—

AYES.

Ali, Maulvi Hassan.
Banerji, Mr. P.
Chowdhury, Maulvi Abdul Ghani.
Fazlullah, Maulvi Muhammad.
Hakim, Maulvi Abdul.
Hussain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Qurasem, Maulvi Abul.
Rahman, Khan Bahadur A. F. M. Abdur-.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bai, Babu Lalit Kumar.
Basu, Babu Jatindra Nath.
Bose, Mr. S.
Bose, Mr. S. M.
Chakrabutty, Babu Nihar Chandra.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Babu Kishori Mohan.
Das, Babu Gurupresad.
Ezaulji, Maulvi Nur Rahman Khan.
Gilchrist, Mr. R. N.
Gladding Mr. D.
Graham, Mr. H.
Haldar, Mr. S. K.
Hogg, Mr. G. P.
Hooper, Mr. G. G.
Hussain, Maulvi Latafat.
Khan, Mr. Ramzan Rahman.
Maiti, Mr. R.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Ray, Babu Khetter Mohan.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy Choudhuri, Babu Hem Chandra.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Sen Gupta, Dr. Naresh Chandra.
Singh, Srijut Taj Bahadur.
Singha, Mr. Arun Chandra.
Stevens, Mr. R. S. E.
Townend, Mr. H. F. V.
Woodhead, the Hon'ble Sir John.

The Ayes being 9 and the Noes 39, the motion was lost.

The following amendments of Maulvi Abdul Hakim were put and lost.

That in clause 23A(*a*), line 3, for the word "may," the words "shall not" be substituted.

That in clause 23A(*b*), line 1, after the word "land," the words "referred to in clause (*a*)" be omitted and the words "mentioned in the list referred to in clause (*a*) of sub-section (*1*) of section 23" be inserted.

The amendment of Mr. H. P. V. Townend was then put and agreed to.

The question that clause 23A, as amended, stand part of the Bill, was put and agreed to.

Clause 24.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to move that in clause 24, line 4, the words, figures and letter "subject to the provisions of section 24A" be omitted. This is a purely consequential amendment in view of the amendment to clause 24A which is to come hereafter.

Dr. NARESH CHANDRA SEN GUPTA: On a point of order, Sir. This being a consequential amendment, I submit that it ought to come after amendment No. 559 which deals with clause 24A. Amendment 559 proposes that clause 24A be omitted, and this amendment is consequential on that amendment. The present amendment says the words "subject to the provisions of section 24A" be omitted. So unless we know what happens to No. 559 I do not know how we can go on with the present amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, may I make my submission? This amendment is necessary here because if clause 24 is passed, no amendment can be made afterwards. If, on the other hand, my amendment is carried, but 24A is not omitted, then this consequential amendment may not be put in at all.

Babu KHETTER MOHAN RAY: Sir, there will be no harm, if both these amendments be taken together.

The Hon'ble Khwaja Sir NAZIMUDDIN: I want to go straightway, Sir.

Dr. NARESH CHANDRA SEN GUPTA: That would mean, Sir, that on a clause which is only subsidiary we will be voting on the real thing.

Mr. PRESIDENT: Your idea is that the House should wait and see whether clause 24A is omitted or not: that is quite reasonable no doubt. Let clause 24A be taken up at this stage. The Hon'ble Member has already moved his motion, but let it remain in abeyance, and let us see the fate of clause 24A.

Clause 24A.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I beg to move that clause 24A be omitted.

Sir, the main reason for this amendment is that when a sale takes place, it is free from all encumbrances for rent; but there is no justification that when a sale takes place for failure of payment of an award, the sale should be free from all encumbrances, because supposing the tenant has a sub-tenant under him the latter loses his right not because of his failure to pay rent but because his superior tenant has not paid his debts. There is no reason why the sub-tenant should be penalised because his superior tenant has not paid his debts. Therefore, Sir, I think it is only fair that clause 24A should be omitted.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I oppose this amendment. The Hon'ble Member is not quite correct in saying that the debt on account of the award is not a rent; the award will include rent also. If there were no award and if the rent had not been included in the award, the landlord might have sold the holding free from all encumbrances; so the holding would have fetched the full value out of which the landlord could recover his rent. The omission of this clause means that the land would be sold subject to all encumbrances; therefore, the value fetched would be very little. The House will remember that owing to economic distress it has become very difficult by compulsory sale of land even to realise four years' arrears of rent for which a suit is ordinarily brought, and very often land is sold at a value which is less than the amount of the rent decree, even when the sale is free from all encumbrances. If you make the sale subject to encumbrances, it means that the land will fetch even less, and when the sale takes place subject to encumbrances, the landlord will not even be able perhaps to recover the arrears which have fallen due—it may be for four years at the date of the application and six or seven years on the date of the award; all that could not be recovered if the sale be not free from encumbrances. That, Sir, I submit will be a consequence of this amendment which is being introduced more or less by the back-door. There is provision in the land revenue laws for the payment of land revenue by the *zemindar* on certain fixed dates. If he fails to pay the land revenue, the *zemindari* is liable to be sold free from all encumbrances, because that *zemindari* is a security for the payment of land revenue. Similarly, it has been provided that the landlord should also have some security in respect of

his arrears of rent from the land. The effect of the removal of this privilege—to sell the land subject to encumbrances—would altogether diminish the value of the property. The landlord will not perhaps be able to recover the arrears of rent which have accumulated for six or seven years; and if he does not get his dues, no other creditor is likely to get anything at all. It is absolutely necessary therefore that the sale which takes place must be free from all encumbrances. If such a sale takes place, the under-tenant has the right to protect himself under section 14 of the Bengal Tenancy Act; he could get himself subrogated to the rights by the payment of the amount of the award. We must remember the fact that the award will be divided into such instalments as the debtor is able to pay. All that is necessary for the under-tenant to protect himself for the time is by paying the amount of the award when the sale takes place and the whole property is sold. To have the sale under the Public Demands Recovery Act means that even then the right, title and interest of the debtor only passes, but even under that Act when a certificate is issued for rent, not only the right, title and interest will pass, but the holding also. What would be the effect of a certificate as you are omitting clause 24A? The Bengal Tenancy Act, Chapter XIV, will also not apply. What will be the effect of a sale under the certificate procedure on a holding? That sale would be a sale for rent and other debts. That being so, it is doubtful whether it would be free from encumbrances or not. If you omit clause 24A, you ought to make some provision to make the position clear to the certificate officer. If you had done that, I could have understood an amendment which would have said that if no instalment had been paid on account of rent then the sale would be under the Public Demands Recovery Act. But if any instalments of rent be included in the certificate, the sale should be free from encumbrances, and I could then have understood an amendment moved to clause 24 and it would have meant an absolutely annulment of all debts. If a person makes a default in paying his rent and his holding is sold, it may not be enough to pay the arrears of rent which have accumulated for six or seven years if the sale be not free from encumbrances. I do not think that it is contemplated by the Hon'ble Member that clause 25 under which the sale takes place would mean an annulment of the debt, but that would be the practical effect of the removal of this clause. I therefore oppose this amendment.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I oppose this motion on the grounds advanced by Dr. Sen Gupta; and I would add some new arguments to what has been urged by him. The object of the Hon'ble Member in moving this amendment is, as stated by him, that the under-tenant should not suffer when the property is sold for the debt of his superior tenant. That I think is a valid argument. But that objection could be met if the procedure laid down in the

Bengal Tenancy Act and in the Revenue Sale Law be followed. It might be provided that where there are arrears of rent unpaid under the award, then the property will be first sold subject to encumbrances and if the value fetched by the sale be not sufficient to pay off the arrears of rent included in the award and also the arrears that have fallen due after the date of application and up to the date of sale, then the property will again be sold free from all encumbrances. This, Sir, is the procedure laid down in the Bengal Tenancy Act as well as in the Revenue Sale Law. Under the Revenue Sale Law if any share of a *zemindari* is advertised for sale for arrears of revenue, first of all it is put up for the recovery of arrears of revenue of the share of the estate subject to all encumbrances; and if the value fetched by such sale be sufficient for the satisfaction of the arrears of revenue, then it is well and good. If, however, the price fetched by the sale be not sufficient to cover the Government dues, then the whole estate is put up to sale and that sale is free from all encumbrances. If the property be sold free from encumbrances, the money fetched by such sale usually becomes sufficient to cover the Government dues. If that procedure is followed, I think the contention raised by the hon'ble mover of the motion will be met and at the same time the interests of the landlords will be safeguarded.

Babu KHETTER MOHAN RAY: Sir, in supporting this amendment I beg to refer to clause 23A which has just been amended. This clause provides that the landlord can include in a suit for recovery of arrears of rent the amount of such arrears which have fallen due after the application or it may be after the determination of the award and also the arrears of rent payable under such award. Then sub-clause (*b*) provides that if any land referred to in clause (*a*) is advertised for sale in execution of a decree or for arrears of rent under a certificate under the Public Demands Recovery Act, 1913, then the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, then he will have priority over other persons. Then clause 24A as it stands provides "where a land mentioned in the list referred to in clause (*a*) of sub-section (1) of section 23 is sold for arrears of rent or such land is sold by a certificate officer under the provision of this Act, then notwithstanding anything contained in this Act the provisions of Chapter XIV of the Bengal Tenancy Act shall so far as may be apply to such sale."

Sir, to my mind the contention of Dr. Sen Gupta as regards this clause is not, I think, valid. I submit that the sale which will take place under the provisions of clause 23A will be free from encumbrances, because if there be a suit in a Court for arrears of rent, then the sale will be held for the arrears of rent, which will certainly be under the Bengal Tenancy Act——

Dr. NARESH CHANDRA SEN GUPTA: Sir, may I explain that I did not refer to clause 23A, but to clause 23?

Babu KHETTER MOHAN RAY: In that case, there is some doubt. I think there is such a clause that a sale under this provision of the Act, the provisions of the Public Demands Recovery Act, will be applicable. If it is sold under the provisions of this Act by the certificate officer, the provisions of the Public Demands Act of 1913 will be applicable. In that case also it will be free from any encumbrance. Doubt may be entertained about it. I think that there should be a clear exposition of the law on the subject whether this sale held under section 23A be free from all encumbrances as provided under the Public Demands Act. Besides this, I have no objection to the elimination of this, if there is a definite provision to indicate that the sale would be held free from all encumbrance. There is no provision under this Act.

Mr. H. P. V. TOWNEND: The position is that the retention of this clause is defended only in the interests of the landlord on the supposition that something may happen which is very unlikely to happen at all. It would be only in very exceptional cases that the argument of Dr. Naresh Chandra Sen Gupta would apply, but it is not a fact that this clause is objectionable only because it does not protect the landlord in this particular case. Actually the clause is open to several objections: it is not at all clear, it might injure under-*raiyats* and other persons who are not affected by the award, and it would not serve any useful purpose. As to its not being clear, it refers to "land" sold for arrears of rent whereas under the Public Demands Recovery Act and the Bengal Tenancy Act the reference is to "holdings and tenures." The Courts might presume that there is a substantial difference intended: there would be the question of the relation of the landlord to the purchaser of part of a holding: and it might cause a lot of confusion. Then again in interpreting the last line of the clause we have to get as far as may be at the intention of the clause. The intention of the clause, on the face of it, is that, whenever there is a sale under this Bill after a default in connection with the award, the land should be sold free from encumbrances, and not only when it is a sale for arrears of rent. The words "as far as may be" were put in for that reason, and the result is that the clause will not apply at all in such cases. Chapter XIV of the Bengal Tenancy Act applies only to arrears of rent and not to arrears of other debt: when the chapter does not apply at all to sales for arrears of debt, "as far as may be" means "not at all." Then there is another point. The Select Committee wanted the land to pass to the purchaser free of any charge for arrears of rent. The clause was inserted in the Bill as a result of a discussion in connection with clause 25(*3*), and it was then decided that sale should be

"free from encumbrances:" then a separate clause was added to secure this object, instead of having an alteration in clause 25(*3*). It is certain that the intention of the committee was for this provision to apply when the sale was due to default in respect of any debt. The primary object was to free the land from any charge outstanding for rent, and the change made in clause 26(*1*)(*a*) was connected with this: but this object will not be secured. There is no specific provision in chapter XIV by which the rent due ceases to be a charge on the land sold: it ceases to be a charge in practice because the land is sold in order to satisfy the decree for it: but if the land is sold to satisfy any other debt the arrear rent is still a charge on it. But, leaving this aside and assuming for the moment that the clause will fulfil the intention of the Select Committee, is that intention justified? What justification is there for extinguishing the rights of an under-*raiyat* when the land is sold for a debt incurred by the *raiyat* and not for rent? This would amount to improving the position of the debtor at the expense of the under-*raiyat*; and it would be absolutely unjust. But there are other possibilities of injustice. Suppose a debtor has borrowed on a mortgage, has got an award, by agreement with other creditors, regarding unsecured debts only and has defaulted: the land is sold for the unsecured debts but the mortgage (not covered by the award) is extinguished. That is not right. It is true that there was a suggestion in the report of the Board of Economic Enquiry for a provision like this to be put in, but the idea there was that all debts of a debtor should be covered by an award, and this particular objection would not then have arisen: but the objection to annulling the rights of under-*raiyats* would still have remained. The House will see that the clause, as it stands, is very confusing, and likely to lead to trouble.

Dr. Sen Gupta and others who have spoken on this amendment have not been speaking on the clause as it stands but have spoken as if it dealt with "holdings" and as if it simply said that whenever lands are sold under this Act for a default covering arrears of rent then chapter XIV would apply. They argue that there may be rent included in the award; there may be default, and, without the clause as it stands, the sale of the property would not fetch enough to pay even the rent. But is it likely that there would be an award at all in such a case, when the security is so small that it would barely cover the arrears of rent included in the award, and actually, when it comes to a sale, does not cover them? There would have to be other debts also before an award was made and, when there was obviously no margin to cover the other debts, no Board would make an award about them. Dr. Sen Gupta's hypothetical case is in fact a case which could be dealt with only under the insolvency provisions if it could be dealt with at all.

I doubt very much whether anyone would bring under this Bill a case where a man was so insolvent as not even to be able to manage

payment of arrears of rent. But, apart from this, what is there to prevent chapter XIV of the Bengal Tenancy Act from applying, even if this clause is omitted, when land is actually sold for arrears of rent included in an award? Dr. Sen Gupta says that the sales would not be sales for arrears of rent. The suggestion is that the sales would be partly for arrears of rent and partly for arrears of debt: but there would be no real working difficulty. The procedure to be followed in connection with the sales is to be laid down by rule, and there is no reason why, under the rules, one certificate should not issue for the arrears of rent, when there is a default, and another for the balance of the debts. Then there would be a separate sale for the arrears of rent and chapter XIV would come in. There is no reason why this should not be done.

It must be obvious from the whole attitude of Government in connection with this Bill that rent is going to be protected, because the Government revenue ultimately depends on the punctual payment of rents. There is no reason why clause 24A should not go out.

Babu KHETTER MOHAN RAY: May I put a question to the mover?

Mr. PRESIDENT: Yes, you may.

Babu KHETTER MOHAN RAY: What is the idea, whether the sale, which would take place under clause 23, for arrears of rent will be also for debts, and arrears of instalments of debts? Whether it will be free from encumbrances? This is my plain question.

Mr. H. P. V. TOWNEND: I do not quite follow.

Babu KHETTER MOHAN RAY: Under clause 23 for arrears of rent, and also for debt——

Mr. H. P. V. TOWNEND: When there is a sale after a suit under 23A, the amendment which we have just adopted does not remove the safeguard which otherwise might apply. If a landlord is going to bring a rent suit, he can, under clause 23A, include in the suit arrears of rent covered by an award. When he includes these, it does not alter the nature of the suit which is still a rent suit, and chapter XIV of the Bengal Tenancy Act applies.

If the query is as regards clause 23, I do not follow the point.

Babu KHETTER MOHAN RAY: There is nothing about sale.

Mr. H. P. V. TOWNEND: Arrears of rent are included in the award under 23: when there is a default and the property is sold

under 25(*3*), the question is, can the property be sold free from encumbrance if there is rent included in the amount covered by the default. I would say (and it is not my opinion only) that we can always, if necessary, get round this difficulty by issuing a separate certificate. The certificate officer will be able to issue one certificate regarding arrears of rent and another certificate regarding other things covered by the award. There is no technical difficulty.

Babu KHETTER MOHAN RAY: In regard to the payment of——

Mr. PRESIDENT: How can I allow you to go on like this. There will then be no end to this discussion.

Mr. S. M. BOSE: May I be permitted to say something about a certain statement made by Mr. Townend, which I think is incorrect.

Mr. PRESIDENT: With regard to what?

Mr. S. M. BOSE: With regard to this clause 24A. He has just suggested that this clause was inserted in the interest of the landlord. I say nothing of the kind.

Mr. H. P. V. TOWNEND: I did not say that: I said it was argued by Dr. Sen Gupta.

Mr. S. M. BOSE: It is not in the interest of the landlord at all, because this clause has not anything to do with payment of rent. It was inserted purely in the interest of the tenant himself so that the price realised by sale may be high. If the property free from encumbrances is sold as under section 159 of the Bengal Tenancy Act, then the purchaser will be inclined to pay far more than otherwise. Under section 159 of the Bengal Tenancy Act if a sale is held for arrears of rent, then a certain amount of interest is annulled, and this clause was inserted entirely with the object that the price realised by the sale might be as high as may be, so that after payment of rent something may be left over for the debtor. This is one of the instances in which the Select Committee has been thrown overboard. I find that the Government has for some reason or other similarly thrown over what has been decided upon at Darjeeling. For instance in 19(*1*)(*c*) regarding secured and unsecured debts; 21A has been omitted; 23 has been seriously modified. Then 24A. It seems to me under these circumstances many things decided at the sitting of the Select Committee have been thrown away, because Government has hardly accepted any of my recommendations.

I oppose this.

The amendment that clause 24A be omitted, was put and agreed to.

Clause 24.

Mr. H. P. V. TOWNEND: I beg to move that to clause 24 the following words be added, namely:—

"or the debtor has been granted a certificate of discharge under sub-section (*2*) of section 21."

The House will remember that a few days ago, when we discussed clause 21 and were dealing with the suggestion that clause 21(*1*)(*b*) should not be used when there was a mortgage on a dwelling house or on the land which was to be excluded from the sale, the Hon'ble Member explained that his intention was otherwise and that clause 21(*1*)(*b*) might be used in such cases. When subsequently I was dealing with that point, I mentioned that we proposed to put in an amendment in this clause, now under discussion, to make the position absolutely clear. The reason for the change is this: under clause 21(*2*), when there has been a sale under 21(*1*)(*b*) and so on, there is to be an order of discharge and a certificate is to be given releasing the insolvent from all debts. It might be argued that, as clause 24 now stands, the debt is extinguished but the mortgage securing it is not extinguished: and that in consequence, when the insolvent debtor dies, the creditor may come down on the heirs and enforce the mortgage against them, because the mortgage is still in force. This argument seems to be very fantastic but there is no reason why we should leave in the Bill words which might perhaps cause doubt and lead to law suits. When a debtor is given a certificate of discharge the debt and the mortgage both ought to cease. That is only a logical position.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that clause 24 be renumbered as sub-clause (*1*) of clause 24 and after that clause as renumbered the following be added:—

"Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a civil court shall cease to subsist when such property is sold under the provisions of section 25 or sub-section (*3a*) of section 26."

This requires a certain amount of explanation because the object of it is not clear at first sight. If land is sold to satisfy debts included in an award, any debt covered by a decree of a Court will be satisfied so far as possible out of the proceeds realised by the sale. That would be done under clause 26(*2*)(*a*) and (*b*). The first thing that would happen would be for each secured creditor to be paid out of the amount realised from the property mortgaged to him, whether the secured debt was included in the award or covered by a decree passed by a Court. Anything which remained after that would go to pay the unsecured debts.

The second thing, after meeting the debts covered by mortgages, would be to pay unsecured debts which are included in the award or are covered by a decree of a Court. If a debt is paid in full, the mortgage is extinguished: the debts being paid, the mortgage ceases. But when only a part of the debt secured by the mortgage is paid, the mortgagee who holds a decree and whose debt is not covered by the award may, if he so desires, sell up the property again. Unless the whole debt is satisfied, the mortgage must continue when there has been no sale for the payment of that mortgage. When land is sold under the provisions of this Bill to meet the debts included in the award, at that stage the mortgagee who has a decree may step in and get the benefit of the sale. His position is then exactly the same as that of a man who has had the land sold up in satisfaction of his mortgage: but he gets a double advantage. First of all, when the land is sold in connection with the award, the mortgagee whose debt is not in the award but who has got a decree gets the benefit of the sale: and secondly, he will be able to sell up the land again in satisfaction of the same debt. It would amount to his being given a second mortgage on the same land after the sale. That position is anomalous: and this amendment provides therefore that when a mortgagee has had the benefit of a sale his mortgage should be extinguished.

The amendment was put and agreed to.

The amendment of the Hon'ble Khwaja Sir Nazimuddin that in clause 24, line 4, the words, figures and letter "Subject to the provisions of section 24A" be omitted was put and agreed to.

The question that clause 24, as amended, stand part of the Bill, was put and agreed to.

Clause 25.

Maulvi ABUL QUASEM: I beg to move that in clause 25(*3*), line 1, for the words and figures "sub-section (*2*)," the words and figures "sub-section (*2a*)" be substituted.

It is only to rectify an obvious slip. I notice that Government have also tabled an amendment to this effect.

The Hon'ble Khwaja Sir NAZIMUDDIN: We accept the amendment.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in the last line of the proviso to sub-clause (*2a*) of clause 25, for the words "all the property of the debtor" the following be substituted, namely:—

"Such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (*1*) of section 26."

This is intended to bring this proviso into line with clause (*3*). It will be noted that Government gave notice of an amendment No. 573 to restore the wording of sub-clause (*3*) as in the original Bill: that was because of various technical difficulties which appeared likely to arise owing to the wording preferred by the Select Committee. It has since been decided that it would be safe to retain the wording preferred by the Select Committee if it is altered slightly. Therefore, it seems only logical that we should bring this sub-clause into line with it. The argument put forward was that it is very unfair to sell up all the property of a debtor if by the sale of only a small portion of the property the amount covered by the award can be met. If we accept this as valid for sub-clause (*3*), it ought to apply to sub-clause (*2a*) also.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 25(*3*), in lines 7 to 10, for the words and figures "under the award except such property as is exempt from sale under the provisions of the Bengal Public Demands Recovery Act, 1913" the following be substituted, namely:—

"whether under the award or under sub-section (*1*) of section 26 or under any decree which has, to the knowledge of the certificate officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (*b*) of sub-section (*1*) of section 23."

I referred to this in my last speech. The position is this: If the sub-clause stands as altered by the Select Committee, the certificate officer is allowed to sell only sufficient to pay the amounts which are payable under the award; but according to clause 26, when he has sold under clause 25(*3*), he has to pay not only the amounts payable under the award but also the following: any amount payable as costs of sale, any amount payable for arrears of rent under the award, any amount due to the local Government, and any amount covered by a decree of a Civil Court. As it stands, clause 25 does not allow him to sell enough to meet payments absolutely necessary under clause 26. It was for this reason that it was proposed by amendment 573 to restore the original wording of the clause. It has now been decided that the clause will be workable if the certificate officer is enabled to sell enough to meet all the various payments—whether for arrears of rent or for any amount due to the Local Government or for any amount due on account of a decree of a Civil Court. If it is not necessary to sell the whole property he would sell a part of it; otherwise he would sell the whole property.

Dr. NARESH CHANDRA SEN GUPTA: I am afraid that this amendment of Mr. Townend is wide of the mark. It will be better if we stick to the original proposal in amendment No. 574. This would not be consistent with the opeaing words of clause 26(*1*) for instance——

Mr. H. P. V. TOWNEND: May I say that I have asked permission to move consequential amendments to alter the first words of clause 26 in order to bring that into line——

Dr. NARESH CHANDRA SEN GUPTA: In any case the principle is this. If a man's land is sold out everything of his liabilities enumerated in clause 26 should be paid out of his property but if the land is not sold out altogether but only a sufficient amount of his property has been sold for the purpose of meeting the debts under the award the same reason does not apply. I quite appreciate the anomaly which arises by reason of the amendment introduced by the Select Committee read along with clause 26 but that can only be met by restoring the original words in the Bill.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in line 3 of sub-clause (*4*) of clause 25 the words and figures "sub-section (*3*) of" be omitted.

There have been several places where we have proposed to omit these words, "sub-section (*3*) of." The fact is that there is provision for sale under the proviso to sub-clause (*2a*) of clause 25 as well as in sub-clause (*3*) and we want the procedure to be the same in every case. It is not intended that there should be one procedure in the case of a debtor who has been declared insolvent and another procedure when a certificate officer has to sell up an ordinary debtor who has defaulted. If these words remain, it will not be necessary under sub-clause (*4*) for the Certificate Officer to keep a separate account of the proceeds derived from the sale of the mortgaged property when the sale is under the proviso to sub-clause (*2a*) of this clause.

The amendment was put and agreed to.

The question that clause 25, as amended, stand part of the Bill, was put and agreed to.

Clause 26.

Mr. H. P. V. TOWNEND: I beg to move that in the first line of clause 26(*1*) the words "property of a debtor" be inserted after the words "when a certificate officer has sold," and that in the third line thereof the words "all the property of a debtor which is liable to sale" be omitted. The clause then will run like this if this amendment and the next amendment to be moved by me are accepted: "When a certificate officer has sold property of the debtor under sub-section (*1a*) of section 21 or under section 25, he shall first pay from the proceeds of the sale." This, Sir, is the point to which Dr. Naresh Chandra Sen Gupta has just drawn attention.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 26(*1*), line 2, the words, brackets and figure "sub-section (*3*) of" be omitted.

The reason for this amendment, Sir, is precisely the same as that one for which similar words were omitted in section 24.

The amendment was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: I beg to move that in clause 26(*1*), line 2, for the word "or," the word "and" be substituted.

Sir, my reason is simple and apparent because these provisions are not alternative, but the one follows the other; and these provisions of clause 26 are copied from section 169 of the Bengal Tenancy Act. When a property is sold, first of all, the cost of execution of a certificate will be paid from the sale proceeds; then the amount payable for arrears of rent under the award, and then any amount payable as arrears of rent which may have fallen due between the date of determination of the debt under section 18(*2*) and the date of confirmation of the sale. This is the order which has been laid down in section 169 of the Bengal Tenancy Act. But if the word "or" exists, then it may be interpreted that either the arrears of rent under the award will be paid, or the amount of rent which has fallen due after the date of determination and up to the date of the confirmation of the sale will be paid. It may be argued in that case that these provisions are alternative, but really, Sir, they are not so.

Mr. H. P. V. TOWNEND: I think, Sir, there is some misunderstanding. The amendment moved is in regard to the word "or" in the second line of clause 26(*1*): but there has been no reference to this in the speech made by the hon'ble mover. If, as I believe, he meant his amendment to the word "or" in what might be called the second line of sub-clause (*a*) of clause 26(*1*)—though if we include lines in italics it is the sixth line, then, Sir, I shall be moving a short-notice amendment which would cover the same point and at the same time simplify the wording generally. I gave notice some days ago of a short-notice amendment that in sub-clause (*1*)(*a*) of clause 26, the word "and" be substituted for the words "or any amount payable."

Mr. PRESIDENT: I think that could be moved later on, after 577D. If this amendment has the same bearing on clause 26(*1*)(*a*) as that of Babu Hem Chandra Roy Choudhuri, then Hem Babu may perhaps withdraw his amendment.

Babu HEM CHANDRA ROY CHOUDHURI: In case, Sir, Mr. Townend's amendment is to the same effect, I have no objection to withdraw my amendment.

The amendment of Babu Hem Chandra Roy Choudhuri was, then, by the leave of the Council, withdrawn.

Mr. H. P. V. TOWNEND: I beg to move that in clause 26(*1*), lines 3 to 6, for the words beginning with "he shall first pay" and ending with the words "of the certificate," the following words be substituted, viz., "he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next."

This will meet the objection that, as this clause stands, the costs of sale, arrears of rent, amounts due to the Local Government—all these would stand on the same footing, whereas, under the Public Demands Recovery Act, the first thing to be paid is the cost, and after that the balance of the proceeds should be distributed as may be necessary. The costs of sale, Sir, should be paid first out of the proceeds of the sale and then the balance would be divided among the various claimants. This is a purely drafting amendment made to carry out the intentions of the Selection Committee.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to point out one thing. If I have understood Mr. Townend aright, he wants to tack (*b*) before (*a*), *i.e.*, payment of any amount payable as arrears of rent, or any amount which may have fallen due between the date of determination of the debt under section 18(*2*) and the date of confirmation of the sale. But, Sir, this would be contrary to the decision of the Select Committee—that Government dues would be paid first.

Mr. H. P. V. TOWNEND: May I explain the misunderstanding, Sir? If my amendment is accepted, the clause will read as follows: "When a certificate officer has sold, etc., he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate, and next—

(*a*) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (*2*) of section 18 and the date of confirmation of the sale; and

(*b*) any amount due to the Local Government."

We are merely making the costs payable first, which is the procedure in the Bengal Tenancy Act and also under the certificate procedure.

Mr. S. M. BOSE: What about the arrears?

Mr. H. P. V. TOWNEND: I am not touching the question of arrears at all now. The Select Committee was of opinion that although in the original Bill no reference was made to costs, they ought to be paid first, because that is the ordinary procedure: so we are simply putting in this drafting amendment in order to make it clear that the costs should be paid first. There is no other change in the clause as it stands.

Dr. NARESH CHANDRA SEN GUPTA: As the section stands, Sir, it means, although the words are not there, that the debts are to be paid in the following order:—

26(*1*)(*1a*);
26(*1*)(*a*);
26(*1*)(*b*).

Does Mr Townend mean that the "next" coming under (7)(*1a*) would lump together (*1*)(*a*) and (*1*)(*b*)? If that is so, he is entirely wrong, because the dues of the Local Government cannot precede the arrears of rent or come along with the arrears of rent: arrears of rent should always have priority. That is the law, Sir.

Mr. PRESIDENT: The best thing for members who have not already spoken would be to speak on the subject and draw their own conclusion. I cannot allow members to carry on a conversation on the subject across the floor of the House.

Babu HEM CHANDRA ROY CHOUDHURI: My difficulty is that we have got no copy of the amendment which Mr. Townend has moved.

Mr. PRESIDENT: Why, a copy of the amendment must have been circulated to the members?

Babu JATINDRA NATH BASU: What is intended, Sir, is that it should be made perfectly clear that rent and the dues of Government should not stand on the same footing: that is to say, they should not be lumped together. One should follow the other, and any phraseology which seeks to achieve that object should set out clearly what is the intention of the Hon'ble Member and what was the intention of the Bill.

The amendment of Mr. Townend was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in sub-clause (*1*)(*a*) of clause 26 the word "and" be substituted for the words "or any amount payable" in lines 6 and 7. The sub-clause would then read as follows: "Any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due, etc." This is a drafting amendment, Sir, made to meet the point to which Babu Hem Chandra Roy Choudhuri drew attention in connection with amendment 577.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 26(*2*) (*a*) after the words "amounts shall" in the penultimate line the following be inserted, namely:—

"unless the debt has been extinguished by such sale."

This, Sir, refers to amendments in clause 24 which have recently been adopted by the House. There are certain types of mortgages the debts secured by which are not extinguished by the sale of the mortgaged land, but there are certain types in which the debt is extinguished by the sale. The ordinary mortgage in England is of the latter type and occasionally similar mortgages are met with in Bengal. When it is a question of a mortgage of this kind, it would be unreasonable to say that the balance of the debt is not extinguished when the mortgage has been extinguished under clause 24. As the clause stands, the mortgagee in such a case could claim that the balance of his debt which has not been met from the proceeds of the sale should be payable as an unsecured debt, although the sale of the mortgaged land would have (apart from this clause) extinguished the debt. This is a lawyer's point: in fact this amendment has been put in at the suggestion of lawyers: and I think it is obviously proper to adopt it.

The amendment was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, I beg to move that the proviso of sub-clause (*2*)(*b*) of clause 26 be omitted.

Sir, my reason is simple. This proviso contains a provision which is not in conformity with that of section 73 of the Civil Procedure Code. Under the Civil Procedure Code when a property is sold for the realisation of a decreetal amount of an unsecured debt, then the sale proceeds are rateably distributed among all such decree-holders. But this proviso lays down that where in a particular year some instalments have been paid and others have not been paid, then out of the sale proceeds those instalments which have fallen due during the year but have not been paid will be paid first and then the surplus will be distributed according to the provision of this clause and presumably

rateably among the unsecured creditors. This is quite a new provision and there is no reason why the unsecured creditors whose instalments have fallen due during the particular year but have not been paid should get priority over the other unsecured creditors whose instalments have not fallen due during that particular year.

Sir, as regards mortgages, the claim will be paid according to the priority laid down in the Transfer of Property Act; but as regards the claims of unsecured creditors, these should be paid rateably out of the sale proceeds. There should not be any question whether any instalment of any unsecured creditor has fallen due during that particular year in which the debtor has made a default. I also refer to the provision laid down in clause 26(2)(*a*), that is, when the mortgaged property has been sold and out of the sale proceeds the mortgage debts have not been paid, then the claims of the mortgagees will rank equally with that of the unsecured creditors, *i.e.*, all the unsecured creditors and the mortgagees whose debts have not been satisfied by the security will get rateably. There is no reason that the unsecured creditor whose instalment has fallen due in a particular year in which the debtor has made a default should get priority over other unsecured creditors. For these reasons I ask for the omission of this proviso. If this proviso be omitted, then the ordinary law as well as the provision of clause 26(2)(*a*) will be followed.

Mr. H. P. V. TOWNEND: Sir, the position is not quite as Mr. Roy Choudhuri imagines. He began with remarks which stated the position correctly but afterwards he assumed that more than one creditor would not be getting instalments in the same year. But the object of the omission of the proviso to clause 23(*1*)(*d*) was this very thing,—to make it possible that all the creditors should get something every year. The intention of the Board of Economic Enquiry was obviously that first one should deal with rent as having priority and then, afterwards, the various creditors should come in and get different amounts; but, as between unsecured creditors, all of them would be getting amounts in the same year as a general rule. I do not see why some of them should be getting amounts and not others: that each should get something each year is the ordinary commonsense way of dealing with such things. To quote a definite case, the position might be that in one year three unsecured creditors would be entitled under an award each to receive Rs. 10: the first creditor gets Rs. 10 and then the debtor defaults. If this proviso is omitted as Mr. Roy Choudhuri proposes, the other two creditors would not get their fair share. When the whole property was sold up, the surplus remaining after payment of costs, etc., would be divided equally and all the three creditors would be treated equally. We may assume naturally that proceeds from the property would not be sufficient to meet the debts in full. The first creditor will get away with what he has already been

paid for the year, viz., Rs. 10 and the other two creditors would get so much less. This is not right: one creditor would have been paid more than the others. He should not get this extra amount as *baksheesh* and there is no reason why the other two should not be paid similar amounts before the equal division begins. This provision was accepted in the Select Committee without any objection whatsoever, if I may say so, from any one. It will be noticed that there is not a single note of dissent on this point by any member of the Select Committee. It was accepted as a quite fair provision and it is only commonsense that there is no reason why one unsecured creditor to whom the debtor has made an extra payment in any year should get that payment in addition to anything which he will get in the general distribution of the assets.

As regards the position of mortgagees, I do not see why they should not be in the same position as any one else. I imagine that generally the mortgaged property will be quite sufficient at any rate to pay one instalment and there is no reason why we should drag in the mortgagee into this sub-clause. It is certain that the proceeds of the land on which the debt is secured will be sufficient to meet one instalment as otherwise the mortgagee would not have lent so much money in the first instance: even if land values have fallen they have not fallen so greatly that the proceeds of the sale would not suffice to pay even one instalment of the debt as reduced.

The amendment was then put and lost.

Mr. H. P. V. TOWNEND: Sir, I beg to move that after clause 26(3), the following be inserted, viz.—

"(3a) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on any immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the certificate officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale."

Sir, the position is that if something to this effect is not inserted in the Bill, creditors who have mortgages on a homestead would have to go to the Civil Court to recover anything which remains due after the sale of property under the certificate procedure.

When a man has mortgaged his house, obviously he should not be protected against the sale of that house as against the creditor who has lent him money on the security of that house. As a matter of fact, there is an exception to this in the Bill: that is when a debtor is declared insolvent. In such a case there is a provision for leaving him

his dwelling house, but otherwise the creditor to whom a dwelling house has been mortgaged should be allowed to have it sold up and not be compelled to incur the expense of going to the Civil Courts. The inducement which we hold out to creditors to come to terms under the procedure of this Bill is that if their debts are covered by an award they will be able to recover by certificate and not by civil suit. When one is using the certificate procedure, the various things which are excluded from sale include the homestead, *i.e.*, a man's dwelling house. To give the certificate officer power to proceed against the homestead, there must be some special provision: and that is why this amendment is proposed here. Under this amendment when everything else fails the certificate officer can sell the homestead to satisfy the mortgage on it just as he can sell it on a certificate for rent.

The amendment was then put and agreed to.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 26(*4*) the following be substituted, viz.—

"(*4*) If the certificate officer fails to recover as a public demand or under the provisions of sub-section (*3a*) any amount payable under the award, he shall certify that it is irrecoverable: and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date:

Provided that the Certificate-officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provision of sub-section (*2*) of section 21 shall as far as possible apply to such insolvent."

Sir, this for the most part is a drafting amendment. As the Bill stands the proviso contradicts the body of the sub-clause. It says that certain things should be done provided that something else is done instead,—it is a drafting mistake. There is another thing: we have a similar provision in the proviso to clause 29. The only difference between the procedure laid down in that proviso and the procedure laid down under sub-clause (*4*) of clause 26 is the reference to three years. From the drafting point of view it is much better to put these two provisions together and to make them one, as otherwise there may be confusion when the Act is applied. As the clause stands after this amendment, a certain procedure is laid down but it is provided that in certain cases the certificate officer may, if he thinks fit, report to the Board and then another procedure will take its place. As I have said, it is chiefly a drafting amendment.

The amendment was put and agreed to.

Maulvi ABUL QUASEM: I beg to move that clause 26(4), lines 4 and 5, the words "the award shall cease to subsist and" be omitted.

Sir, this is a mere drafting amendment. I confess I do not quite understand what is meant by the expression "the award shall cease to subsist." So far as I can understand it means that when a certificate officer has certified that any amount cannot be recovered under the provisions of the Public Demands Recovery Act, the award shall be deemed to be merged in a decree of the civil court as though a decree has been passed. It only concerns the mode of the realisation of the amounts included in the award. The award subsists for many purposes. The position is not as though the Bill had not been brought into operation at all. The labours of the Conciliation Board will result in the award and it will be the written record of the settlement. I do not see why it should be taken that the award had ceased to subsist. On a reference to clause 26 it will be found that the award contains a list of the movable and immovable properties and the details of the debt and other things.

All these things will be required for purposes of reference, even after the certificate officer has certified to the above effect. The award is, therefore, an exceedingly important document. It is the tangible result of the provisions of the Bill being brought into operation with respect to a particular debt. What happens after the certificate officer's certificate? Instead of being recovered under the provisions of the Public Demands Recovery Act, the creditor concerned will be allowed to have recourse to the civil court so far as the realisation of the amount given in the award is concerned. He cannot go back on the award, he cannot be allowed to think that he can claim the amount originally borrowed together with full interest as though the Conciliation Board did not operate in case of the debt at all. The creditors cannot take it that the previous position before the operation of the Act supervened, the moment the certificate officer gave the certificate. The only thing that is meant by saying that the award shall cease to subsist is that it should thenceforth be recoverable by the civil court. It is said only that the amount payable under the award shall be recoverable as if a decree of the civil court had then been passed. It is not said that any amount recoverable under the award shall be so recovered. The creditors might like to revert back to their original claim and this might lead to confusion and misunderstanding. If the effect of the award is to subsist, if the result of the labours of the Conciliation Board to go for nothing, then the creditors should be clearly restricted to their claim as accepted and embodied in the award. If the award goes, things might very well be considered relegated to the position which subsisted before the Act came into operation in respect of the debtor concerned. I, therefore, want that this expression "The award shall cease to subsist" should disappear. My only intention is

that it should be made perfectly clear that instead of being recovered under the Public Demands Recovery Act, the creditor shall be free to go to the Court and get an execution only for the amount he was granted under the award.

With these words, I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: The reason why I have put in this "the award shall cease to subsist" is that supposing there has been a default and the certificate officer has not been able to recover the amount, then if the award does not cease to subsist, it will continue to be liable for payment by instalments. At the same time there will be a Civil Court suit for it. So to be able to extinguish the claim under the award, it is necessary that the phrase should be there. For this reason I oppose the amendment.

The amendment was put and lost.

The question that clause 26, as amended, stand part of the Bill was put and agreed to.

New clause 26A.

Mr. H. P. V. TOWNEND: I beg to move that after clause 26 the following be inserted, namely:—

"26A. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (*a*) of sub-section (*1*) of section 23 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (*a*), (*b*) and (*c*) of sub-section (*1*) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the certificate officer, or retained by him, as the case may be, for distribution in the manner provided in section 26 of this Act."

The position is this. When a landlord brings a rent suit and the land of the debtor is sold up, and all the mortgages and other encumbrances extinguished, the net result is that to all intents and purposes the award is finished with. The security has gone and the chances of getting any money are very small indeed. If after the landlord has obtained his dues by sale in execution of a rent suit, any amount is left, it has to be paid to the judgment-debtor in the ordinary course of law. This amendment would protect the interests of the creditor to a certain extent at this stage. It provides that the amount left after paying the

landlord should be handed over to the certificate officer, or retained by him, for distribution amongst the creditors. This is only justice to the creditors.

The amendment was put and agreed to.

The question that clause 26A stand part of the Bill, was put and agreed to.

Clause 27.

Kazi EMDADUL HOQUE: I beg to move that clause 27 be omitted.

Clause 27 of the Bill says that the Conciliation Board that will be formed under the provisions of this Act will not only not be allowed to settle up any debt of a member of a co-operative society with respect to that society but no settlement of any debt which he owes to any outside creditor will be allowed to be made by the Conciliation Board. This is very strange. The attitude of the Government in this respect is as strange as it can be. I do not understand for a moment why the Government should make this discrimination in respect of the members of the co-operative societies. So far the debtors are concerned, if the members of the co-operative societies are excluded from the benefit of this Act, then I do not know for whom this Bill is intended. There is hardly any member of a co-operative society who does not owe to outside creditors and there is hardly any agriculturist who is not a member of a co-operative society. So when there are agriculturist members of co-operative societies there are outside creditors for those members. In our experience we find that the co-operative movement has become a failure in this province, if not in the country. It could not absolve the members of the co-operative societies from the outside debts. So I say that if the members of the co-operative societies are precluded from the benefit of this Act, I do not know who would be left to reap any advantage under this Act, and why should there be this discrimination at all? Once more the Government is put to the crucial test. If the Government propose to give shelter to the members of the co-operative societies, it is well and good. But if the Government have this attitude, then I think it is up to us to think in a way like this that while the Government have no confidence in the Boards to be constituted, they ask others to repose their confidence in them. Well, the debtors will file their statement of debts and in that statement they will also include the debts of the co-operative societies. Now in disposing of the cases by the Boards, why should they not take into consideration the cases of the members of the co-operative societies? Why should they not see that the interest of the members of the co-operative societies is not jeopardised? I think the members of the

Board, that will be constituted of Government nominated men should think thrice to do anything which would affect the interest of the co-operative movement or of the co-operative societies for the matter of that? So why do the Government apprehend that the Boards to be constituted under the provision of this Act would do something which will prejudicially affect the interest of the co-operative movement? If there is such apprehension and misgiving in the mind of Government, then why should they not have similar apprehension so far as other creditors are concerned? The Government want that the joint stock companies should suffer, but not the bank—the financier of the co-operative societies in which the Government is interested. They should not budge an inch from the position already taken. When you have given loan to unfortunate fellows you must suffer a little sacrifice for them. I do not know why only the joint stock company should suffer. You are here playing the part of a Shylock. What is the difference between companies registered under the Joint Stock Companies Act and the societies registered under the Co-operative Societies Act? If you say the co-operative societies have got no money of their own to run their business, that is to say they have to do with the depositors' money there, then are not the depositors' money locked up in the joint stock companies too? Then why this distinction between them? They stand exactly on the same footing. You say that the co-operative societies stand not only in the position of debtors but they are also creditors. But I say, they would be creditors only when there would be sufficient reserve fund at their disposal but not before that. Before that they are as good debtors as anybody else. Now in some quarters it is said that the society people may enter into agreements with outside creditors and act in such a way that the whole of their properties might pass out of their hands to the detriment of their societies. So in that case the interest of the Co-operative Department will greatly hamper. But we know that the debtors may try to come to an agreement for the settlement of their debts and if they come to any agreement, that agreement will have to be placed before the Board and the Board will consider whether the agreement is legitimate or not, and whether the agreement is just and reasonable. All these things will have to be enquired into by the Boards before giving any award. So there is no apprehension whatsoever that the society members will do anything which might jeopardise the interest of the Co-operative Department. It is also said in some quarters that the Bill has not totally precluded the society members from any compromise with the outside debtors, but simply requires by this clause that they will have to take the previous approval in writing of the prescribed authority. We know not what sort of approval would be got and we do not know either whether the authority mentioned here as the prescribed authority is the Registrar of the Co-operative Societies or the Assistant Registrar or even the inspectors or the auditor for the matter of that. But in any

case these people, circumstanced as they are, will always keep their sharp eyes upon full realisation of the society's debts for that is necessary to keep the movement agoing and also to keep their interest intact.

Mr. PRESIDENT: Order, order. I must adjourn the Council. The Kazi Sahib might resume his speech on Monday next.

Adjournment.

The Council was adjourned till 11 a.m. on Monday, the 16th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Monday, the 16th December, 1935, at 11 a.m.

Present:

Mr. Chairman (Khan Bahadur MUHAMMAD ABDUL MOMIN) in the Chair, three Hon'ble Members of the Executive Council (the Hon'ble Sir JOHN WOODHEAD being absent), two Hon'ble Ministers (the Hon'ble Khan Bahadur M. AZIZUL HAQUE being absent), and 77 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Noabad taluks and jotes in Chittagong.

*28. **Haji BADI AHMED CHOWDHURY:** (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to state—

(*i*) the amount of revenue and rent of the Noabad taluks and jotes reduced under each khas mahals in the district of Chittagong on the recommendation of the Special Officer;

(*ii*) when the reduction and remission of rent and revenue made will be given effect to; and

(*iii*) whether the said reduction and remission will be given with retrospective effect?

(*b*) Are the Government considering the desirability of stopping issue of certificates and sales of jotes and taluks, rent and revenue of which have been reduced, till effect is given?

(*c*) Are the Government also considering the desirability of resettling all the jotes and taluks purchased by Government with the former jotedars and talukdars at the reduced rate on payment of full arrears?

(*d*) Is the Hon'ble Member aware that after the last revisional survey—

(*i*) many jotedars and talukdars have lost their homesteads and all their lands; and

(*ii*) some have migrated to Burma on the sale of their jotes and taluks?

(*e*) What relief, if any, do the Government intend giving to the poor jotedars and talukdars whose jotes and taluks have been purchased by Government?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) (*i*) The information is not available as the work is still in progress.

(*ii*) and (*iii*) Abatements will be given effect to from April, 1936, and remissions with retrospective effect from 1931, in the majority of cases.

(*b*) Not entirely, but such cases are being treated with due consideration.

(*c*) No such general order is contemplated, but special cases are being considered on their merits.

(*d*) (*i*) and (*ii*) No.

(*e*) The member is referred to the answer to (*c*).

Library grant out of Rural Development Fund.

*27. **MUNINDRA DEB RAI MAHASAI:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing the names, location and nature of the libraries which have received grant out of the Rural Development Fund?

(*b*) Will the Hon'ble Minister be pleased to state the conditions to be fulfilled by the libraries desirous of getting the grant?

Mr. H. GRAHAM: (*a*) and (*b*) What the scheme contemplates is not grants to existing libraries but financial aid in the provision of library accommodation. A full statement cannot be furnished at present as certain details are still under the consideration of Government.

Mr. SHANTI SEKHARESWAR RAY: Will the Secretary, Education Department, be pleased to state when Government expect to make a full statement?

Mr. H. GRAHAM: The statement involves the work of all departments, and, I believe, by January, the scheme will be fully ready.

Irrigation of certain portions of Bankura, Birbhum and Burdwan.

*28. **Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware—

(*i*) that the topographical condition of the Sadar subdivision of the Bankura district, the western portion of the Birbhum district and the Asansol subdivision of the Burdwan district are uneven;

(*ii*) that there are no powerful flowing rivers near by from which any canals can be fed;

(*iii*) that any project of canal irrigation in those places will be of prohibitive cost;

(*iv*) that irrigation from tanks and bunds was adopted by the people centuries before and has been continuing even at present;

(*v*) that this has been recognised as the only feasible process of irrigation for helping agriculture in those places;

(*vi*) that in the past agriculture in those places thrived under irrigation from tanks and bunds;

(*vii*) that the unrepaired condition of the tanks and bunds and their getting silted up from neglect of long decades, make them contain a small fraction of the volume of water they formerly used to contain;

(*viii*) that at present there are decadence of agriculture and the consequent distress of the people there; and

(*ix*) that for the existence of many co-sharers for one tank or bund and for other regrettable causes the tanks and bunds cannot be improved?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Member be pleased to state what steps the Government have been taking or contemplate taking for introducing a legislative measure at an early date making the improvement of the tanks and bunds compulsory?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*) Yes.

(*ii*) There are several rivers in these areas from which canals can be fed.

(*iii*) The matter is under investigation.

(*iv*) Yes, in certain areas.

(*v*) Yes, in certain places.

(*vi*) Government have no precise information.

(*vii*) Yes, in some cases.

(*viii*) Yes, to some extent.

(*ix*) This may be so in some cases.

(*b*) The question of improving irrigation tanks and bunds in Western Bengal is engaging the attention of Government.

Rai Bahadur SATYA KINKAR SAHANA: With reference to answer (*a*) (*ii*), will the Hon'ble Member be pleased to state what rivers he has in mind when he says that there are several rivers in these areas from which canals can be fed in Western Bengal?

The Hon'ble Sir BROJENDRA LAL MITTER: So far as my information goes, the Damodar, Ajay and Bakreswar.

Tolly's Nala.

*29. **MUNINDRA DEB RAI MAHASAI:** (*a*) Has the attention of the Hon'ble Member in charge of the Irrigation Department been drawn to the deplorable condition of the Adi Ganga or Tolly's Nala?

(*b*) Will the Hon'ble Member be pleased to state what action, if any, do the Government propose to take to improve this waterway flowing through the southern section of the city?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Khwaja Sir Nazimuddin): (*a*) The Adi Ganga is largely silted up due to changes that have occurred in the delta of the Ganges river.

The condition of the channel known as Tolly's Nala is not deplorable though it is capable of improvement.

(*b*) The question of improving Tolly's Nala is under investigation.

Howrah-Sheakhala Light Railway—Passengers' train in the morning and evening.

*30. **Mr. P. BANERJI:** (*a*) Is the Hon'ble Minister in charge of the Public Works (Railways) Department aware—

(*i*) that most of the office-going daily passengers from Sheakhala and other distant up stations have to leave their homes at 6-30 or 6-45 a.m. to catch the office trains (62 and 66-Down trains); and

(*ii*) that the inconvenience of the arrangement of trains has compelled a number of passengers to leave their homes and to reside in Calcutta for their services?

(*b*) Are the Government considering the desirability of urging upon the Managing Agents of the Howrah-Sheakhala Light Railway—

(*i*) to have the 60-Down train in the morning run in such a way as to take the same amount of time as 62-Down train;

(*ii*) to have the 3-Up trains in the evening, viz., 73-Up, 75-Up and 77-Up, run in the same speed as the two morning trains, viz., 62-Down and 66-Down;

(*iii*) to arrange the running of the 66-Down train direct from Kalipur to Kadamtala without any stoppage in the intervening stations, so that it may reach Kadamtala at 9-26 a.m. and Howrah Ghat at 10-04 a.m.;

(*iv*) to arrange the 75-Up train in the evening to run direct from Kadamtala to Kalipur without stopping at the intermediate stations and reach Sheakhala at 8-33 p.m.; and

(*v*) to arrange to run 63-Up and 70-Down trains daily direct to Sheakhala and not *via* Jonai, for the convenience of the passengers for up stations beyond Chanditala and to run one of the shuttle trains between Chanditala and Jonai in their places?

(*c*) If the answers to (*b*) are in the negative, will the Hon'ble Minister be pleased to state what other steps are in the contemplation of the Government to remove the grievances of the daily passengers?

Mr. H. S. E. STEVENS: (*a*) (*i*) and (*ii*) No.

(*b*) (*i*) to (*v*) A representation requestinng revision of the time table of this Railway was forwarded by Government to the Managing Agents who have replied that the question is under their consideration.

(*c*) Does not arise.

Madaripur Criminal Courts.

*31. **Rai Bahadur AKSHOY KUMAR SEN:** (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to state whether the Government propose to shift the criminal courts at Madaripur from their present site?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state where and when they are going to be shifted?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) and (*b*) The matter is engaging the attention of Government. No decision has been arrived at yet.

Madrasah grant in Chittagong Division.

*32. **Maulvi SYED OSMAN HAIDER CHAUDHURI:** Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing—

(*i*) the allotment of grants for the reformed madrasahs in the Chittagong Division; and

(*ii*) the average grants sanctioned to a Junior and a High madrasah, district by district, in the division?

Mr. H. GRAHAM: A statement is laid on the table of the House.

Statement referred to in the reply to starred question No. 32.

(*i*) Rs. 67,400.

(*ii*) Average grant in—	To a Junior madrasah.	To a High madrasah.
	Rs.	Rs.
Chittagong	... 44	150
Noakhali	... 45	195
Tippera	... 46	175

Aided madrasahs in Chittagong.

***33. Maulvi SYED OSMAN HAIDER CHAUDHURI:** Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing—

(*i*) the present number of the reformed Government-aided madrasahs in the Chittagong Division;

(*ii*) the changes in regard to the amount of the Government aid to these institutions in the years from 1932 to 1935; and

(*iii*) the reasons for those changes, if any?

Mr. H. GRAHAM: (*i*) 109 in 1934-35.

(*ii*) and (*iii*) The information cannot be compiled without considerable delay and undue labour.

Railway Advisory Committee.

***34. Khan Bahadur Maulvi MUAZZAM ALI KHAN:** Will the Hon'ble Member in charge of the Commerce Department be pleased to state—

(*a*) whether a member of the Railway Advisory Committee is entitled to make suggestions about removing the inconvenience of the people of different places under the jurisdiction of that railway?

(*b*) If so, will the member of the Advisory Committee be granted a railway pass to visit those places before discussing his suggestions?

Mr. D. CLADDING: (*a*) Yes.

(*b*) Government understand that when an Agent is satisfied that it is in the public interest that a non-official member of a Local Advisory Committee should make a journey in connection with any subject under or about to come under the consideration of the Committee, a free ticket is given to such member in respect of such journey.

Saraswati river.

*35. **MUNINDRA DEB RAI MAHASAI:** (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware—

(*i*) that the Saraswati was once a mighty river frequented by sea-going vessels;

(*ii*) that it is in a deplorable condition now; and

(*iii*) that since the silting up of the river there has been deterioration of the adjoining lands as also of the health of the people of the surrounding villages in the Hooghly and Howrah districts?

(*b*) Will the Hon'ble Member be pleased to state what steps, if any, the Government propose to take to resuscitate the river and to improve the condition of lands adjoining it?

The Hon'ble Khwaja Sir NAZIMUDDIN: (*a*) (*i*) Yes.

(*ii*) The condition of this river is not good but it has been improved in recent years as a result of silt-clearance by local people and of flushing with water from the Eden Canal.

(*iii*) The deterioration of the land adjoining the river and of the health of the inhabitants of the villages in that locality is not due only to the silting in the river, other causes are involved.

(*b*) The policy of flushing this river is being continued while measures for resuscitating the river are being investigated.

Howrah-Sheakhala Light Railway—Passenger Service.

*36. **MUNINDRA DEB RAI MAHASAI:** (*a*) With reference to the reply given on the 26th August, 1935, to my starred question No. 89(*a*) to (*e*), will the Hon'ble Minister in charge of the Public Works (Railways) Department be pleased to state what action, if any, has been taken by the Government to remove the grievances of the passengers referred to therein?

(*b*) Is the Hon'ble Minister aware that a representation, dated the 25th September, 1935, has been made to the Government by the Howrah-Sheakhala Light Railway Passengers' Association regarding the important office train services both in the morning and evening?

(c) If the answer to (b) is in the affirmative, will the Hon'ble Minister be pleased to state what action, if any, has been taken on the subject?

(d) Is the Hon'ble Minister aware—

(i) that the Senior Government Inspector of Railways, Circle No. 1, has remarked in paragraph 9 (b) of his Annual Inspection Report for the year ending 1934-35 that high powered electric headlight (search-light) should be fitted to the engines on the Howrah-Sheakhala Light Railway for the interest of the safety of the public; and

(ii) that it was also notified by the Government in the *Calcutta Gazette*, dated 19th May, 1932, that all the engines on the said line should be equipped with sufficient powerful head-lights (search-light)?

(e) If the answer to (d) is in the affirmative, will the Hon'ble Minister be pleased to take necessary action in the matter?

Mr. H. S. E. STEVENS: (a) Government have investigated the alleged grievances and have addressed the Managing Agents with a view to improving the service, where necessary.

Orders are being issued sanctioning an increase of speed from 15 to 25 miles per hour between Uttar-Bantra and Sheakhala, as recommended by the Senior Government Inspector.

(b) Yes.

(c) Reorganisation of the train services which will be necessitated by the increase of speed referred to in (a) above, is already engaging the attention of the Managing Agents.

(d) (i) and (ii) The Senior Government Inspector recommended the substitution of electric for oil headlights.

(e) Government are taking necessary action.

Convicted prisoners in connection with labour movement.

*37. **Maulvi MUHAMMAD FAZLULLAH:** (a) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state whether the prisoners convicted in connection with the labour movement on charges of sedition, under the Press Act, etc., receive special treatment inside the jails as distinct from the treatment meted out to the ordinary criminals?

(b) If the answer to (a) is in the affirmative, will the Hon'ble Member be pleased to state the exact nature of such special treatment?

(c) Is it a fact that the aforesaid prisoners in the Alipore Central Jail are being kept together with the ordinary criminals, such as thieves, dacoits, cheats, committers of rape, etc.?

(d) Is it a fact that some of them, e.g., Genda Singh and Sk. Rahim, both convicted for sedition, were and are being forced to work in the *ghani* and the general kitchen?

(e) Is it a fact that ordinary criminals of the Anglo-Indian community are always given better treatment and placed in the higher divisions while the prisoners convicted for political offences in connection with the labour movement are generally treated as ordinary criminals and placed in Division III?

(f) Is it a fact that the prisoners convicted in terrorist cases are recognised as political prisoners and receive better treatment?

(g) Is it also a fact that the prisoners convicted in connection with the labour movement for political offences receive less favourable treatment than even the ordinary criminals?

(h) If the answers to (e), (f) and (g) are in the affirmative, what are the reasons for the differential treatment?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (a) No.

(b) Does not arise.

(c) No, they are accommodated in separate cells when not at work.

(d) Spinning, and work in the press were allotted to Genda Singh, and work in the kitchen to Sk. Rahim.

(e), (f) and (g) No.

(h) Does not arise.

Night clubs in Calcutta.

*38. **SETH HUNUMAN PROSAD PODDAR:** (a) Will the Hon'ble Member in charge of the Police Department be pleased to state how many night clubs are there in Calcutta at present?

(b) Is the Hon'ble Member aware that the night clubs are frequented largely by non-members than by their members?

(c) Is the Hon'ble Member also aware of the existence of a public feeling that the night clubs in general create a vicious atmosphere and tend to corrupt the morale of the city?

(d) Is it a fact that the Commissioner of Police has issued a notice to the various night clubs to show cause as to why they should not be suppressed?

(*e*) Is it a fact that these clubs have been in existence for many years?

(*f*) If the answer to (*e*) is in the affirmative, why have not the Government taken earlier action to suppress them?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) Four.

(*b*) Yes.

(*c*) Government are aware that in the opinion of many persons night clubs are an undesirable feature of social life.

(*d*) No, but a warning notice was issued on certain clubs regarding strict observance of the law on the subject of sale of liquor.

(*e*) The oldest among them was opened in December, 1926, while the rest are of recent dates.

(*f*) As in all such cases Government can take effective action only when they are in possession of evidence sufficient to support a conviction.

Mr. SHANTI SEKHARESWAR RAY: Will the Hon'ble Member be pleased to state whether these night clubs are run by Europeans or by Indians?

The Hon'ble Mr. R. N. REID: I have no knowledge, Sir.

Mr. SHANTI SEKHARESWAR RAY: Will the Hon'ble Member be pleased to state whether Government have any objection to the existence of these night clubs?

The Hon'ble Mr. R. N. REID: That is a matter of opinion, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I have put a definite question as to whether Government have objection. What I want is, therefore, a definite statement of facts, and no opinion of Government.

The Hon'ble Mr. R. N. REID: I am unable to give it.

Mr. SHANTI SEKHARESWAR RAY: Will the Hon'ble Member be pleased to state whether Government have received complaints against these night clubs from anybody?

The Hon'ble Mr. R. N. REID: I have not seen any such complaint, Sir.

Projected Damodar Bridge.

*39. **Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that during the last disastrous Damodar flood all communications of the country lying south of the river were cut off with Burdwan and other places north of the river;

(*ii*) that for days together no relief could be sent to that part of the country;

(*iii*) that the amount of damage in that part of the country could not be ascertained before the flood subsided and the river could be crossed;

(*iv*) that a similar deplorable state of things prevailed during the Damodar flood in 1913;

(*v*) that during the last quarter of a century it has been noticed that the frequency of flood havoc is increasing; and

(*vi*) that there is a consensus of opinion, both official and non-official, that as the bed of the Damodar has abnormally risen and is still rising such disastrous floods will be more frequent in the future and that a bridge across the Damodar river is essentially necessary for such emergencies and for the general improvement of the country through increased facility of communication?

(*b*) If the answers (*a*) are in the affirmative, will the Hon'ble Minister be pleased to state what steps are being taken to facilitate the construction of the projected bridge over the Damodar from the Road Board Fund?

MEMBER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) (*i*) Yes, when the flood was at its height.

(*ii*) The onrush of water took place on the 12th of August, 1935. Relief measures commenced in that area on the 14th of August.

(*iii*) and (*iv*) Yes.

(*v*) No.

(*vi*) Yes.

(*b*) The construction of a bridge over the river Damodar at Burdwan is under the consideration of Government.

Distress in Western Bengal.

*40. **Rai Bahadur SATYA KINKAR SAHANA:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware—

(*i*) that there were scanty monsoons and the failure of rains in the fourth week of September and the whole of October;

(*ii*) that the paddy crops in the districts of Bankura, Birbhum, Burdwan, Murshidabad and Midnapore is not expected to be more than a small fraction of the normal;

(*iii*) that the floods in August in the Damodar, the Ajay and the Cossye have aggravated the miseries of the people;

(*iv*) that already distress has been noticed in parts of those districts and that Government have opened test-work centres in them through the District Boards and the District Magistrates; and

(*v*) that under the present financial condition it is not expected to be possible for our Government to cope with the amount of distress that is apprehended in the near future, without some extraneous help?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Member be pleased to state whether the Government have been taking or contemplating any steps for—

(*i*) the early commencement of the construction, from the Road Development Fund, of that part of the projected Calcutta-Bombay Trunk Road which falls within the province of Bengal;

(*ii*) the early commencement of the construction of the projected bridge across the Damodar south of Burdwan with money from the Road Development Fund;

(*iii*) the construction of some of the irrigation schemes in the Burdwan Division, specially in the district of Bankura; and

(*iv*) the re-excavation of those tanks and bunds for the improvement of sanitation and agriculture under powers bestowed on the executive heads of the districts by an emergency legislation?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*) Yes, as regards Western Bengal.

(*ii*) Generally speaking, the crop of paddy is expected to be poor in those districts.

(*iii*) Yes.

(*iv*) Test works are in progress in the districts of Bankura and Birbhum; and they are contemplated in Murshidabad and Burdwan.

(*v*) Government anticipate no difficulty in coping with the situation.

(b) (i) and (ii) The matter is under correspondence with the Government of India and no progress can be made until their sanction is received.

(iii) and (iv) These matters are under consideration.

Bengal Cruelty to Animals Act, 1920.

*41. **Maulvi ABDUL HAKIM:** (a) Will the Hon'ble Member in charge of the Police Department be pleased to state whether the Bengal Cruelty to Animals Act, 1920, is in force anywhere in Bengal?

(b) Is it a fact that in Calcutta bullocks and buffaloes, etc., are let loose from the carts and allowed rest from 12 a.m. to 3 p.m. every day in all seasons?

(c) Is the Hon'ble Member aware that carts are driven by bullocks and buffaloes throughout the province in all seasons?

(d) Will the Hon'ble Member be pleased to state the reason why this Act is not enforced everywhere in Bengal?

The Hon'ble Mr. R. N. REID: (a) The Act is in force in Calcutta only.

(b) Buffaloes only are required to be unyoked between 12 noon and 3 p.m. from April 1st to a date notified by Government every year, usually towards the end of June.

(c) Yes.

(d) A suitable agency for the proper working of the Act does not exist outside Calcutta.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Bengal Government Press—Purchase of Bengali Lino Machines.

12. **Maulvi LATAFAT HUSSAIN:** (a) With reference to the statement on the floor of this House by the then Hon'ble Member in charge of the Finance Department on the 18th August, 1928, that the machineries required for the Bengal Government Press are being purchased through High Commissioner, will the Hon'ble Member in charge of the Finance Department be pleased to state whether it is not a fact that the Bengal Government Press authorities purchased six Bengali Lino Machines in the year 1935?

(b) If the answer to (a) is in the affirmative, will the Hon'ble Member be pleased to state—

(i) when those six Bengali Lino Machines were purchased;

(ii) through whom the orders for purchasing the machines was placed;

(*iii*) whether they were purchased through the High Commissioner;

(*iv*) what is the original price of each machine;

(*v*) what is the date of order in each case; and

(*vi*) whether the Press authority got discount when purchasing those machines in question?

(*c*) If the answer to (*b*) (*vi*) is in the affirmative, will the Hon'ble Member be pleased to lay on the table a statement showing—

(*i*) the rate of discount earned while purchasing those machines in question; and

(*ii*) in what fund the discount has been credited?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) Yes.

(*b*), (*i*), (*ii*) and (*v*) All six machines were ordered on 26th June, 1935, through the "Linotype Machinery, Limited, Calcutta."

(*iii*) No.

(*iv*) The total cost of these machines including equipment was Rs. 1,06,244-4.

(*vi*) No.

(*c*) Does not arise.

Arrest of Babu Phonindra Nath Ukil of Gaibandha.

13. Maulvi RAJIB UDDIN TARAFDER: (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state whether it is a fact that Phonindra Nath Ukil of Gaibandha has been arrested under the Criminal Law Amendment Act, 1930, in connection with the Dalhousie Square outrage and detained in the Deoli Detention Camp and since then has been transferred from jail to jail till lately he has been brought into the Presidency Jail?

(*b*) Is he suspected to be a T. B. patient?

(*c*) If the answer to (*b*) is in the affirmative, are the Government considering the desirability of his release on that ground?

(*d*) Is the Hon'ble Member aware that the mother of the detenu has got her mind deranged since the arrest of her son?

The Hon'ble Mr. R. N. REID: (*a*) Babu Phonindra Nath Ukil was arrested at his house at Gaibandha on the 3rd September, 1932, and was released on the 29th September, 1932.

(*b*) and (*d*) Government have no information.

(*c*) Does not arise.

Khas mahals and temporarily-settled estates in Mymensingh.

14. **Maulvi ABDUL HAKIM:** Will the Hon'ble Member in charge of the Revenue Department be pleased to lay on the table a statement showing approximately—

(*i*) the total amount of annual rents realisable from the tenants of the *khas mahals* and temporarily-settled estates in the district of Mymensingh;

(*ii*) the net annual demand of the Government from these *khas mahals* and temporarily-settled estates excluding the collection charge and other charges, if any;

(*iii*) the rate of the collection charge in terms of percentage for realising annual rents from the *khas mahals* in this district; and

(*iv*) the rate of the collection charge in terms of percentage for realising annual rents from the tenants of the temporarily-settled estates of this district?

The Hon'ble Sir BROJENDRA LAL MITTER: (*i*) and (*iv*) The information is not available.

(*ii*) Rs. 1,55,133.

(*iii*) There is no fixed rate. In 1934-35, it came to 7·56 per cent. of the current demand.

Professional prostitutes.

15. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to lay on the table a statement showing the number of professional prostitutes in Bengal, district by district?

(*b*) Is the Hon'ble Member aware—

(*i*) that there is no systematic control or medical examination of these public women;

(*ii*) that these women are disseminating venereal diseases to the people; and

(*iii*) that the number of persons suffering from venereal diseases are increasing day by day in Bengal?

(*c*) Do the Government intend introducing the system of licensing these professional prostitutes and controlling the diseases by effecting the introduction of systematic medical examination as is done in European countries?

The Hon'ble Mr. R. N. REID: (*a*) The information asked for is not available and could not be obtained without a laborious enquiry which Government are not prepared to undertake.

(*b*) (*i*) Yes.

(*ii*) Where prostitution exists, such diseases must also be prevalent.

(*iii*) The number of cases reported shows a slight increase in recent years, but it is possible that this may be as much due to better reporting as to a greater prevalence of the disease.

(*c*) No.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

Bengal Agricultural Debtors Bill, 1935.

Kazi EMDADUL HOQUE: Mr. Chairman, as I said the other day, that although there is apparently nothing in clause 27 to absolutely debar the Debt Conciliation Board from dealing with the debts of members of co-operative societies, yet the Board will have difficulty in dealing with them on account of the restriction sought to be imposed by the provision of this clause. Under this clause, the Board will have to obtain beforehand the approval of the prescribed authority, and I surmise that there will hardly be any case in which the prescribed authority will give his consent or approval, because this clause has been embodied in the Bill as a safeguard against the interests of the depositors of the Bengal Provincial Co-operative Bank which is the financier of all the societies in the province. Sir, the depositors there are officials, and out of sympathy for the officials who have deposited their money in that bank, this clause has been inserted. If that is not the case, I cannot understand why on the same ground the joint stock companies have not been excluded from the operations of this Bill. It may be said that the movement is run on a co-operative principle, that an individual member's liabilities are not limited to the extent he owes to the society, but that his liability extends over the whole debt of the society, that is to say, the liabilities of members of a society are joint. So long as there is a pie of the society unpaid, each and any one of the members is liable for it. I have nothing to say against that. But I ask, what is the basis on which a loan is given by a co-operative society? Is the loan secured? It is not. Only at the time of giving a loan to an individual member, a statement of his assets and liabilities is required to be furnished. That statement gives the society the opportunity of knowing what amount the individual member

can get as loan, but there is no question of security whatsoever. Therefore, Sir, the question of impairing the security cannot arise at all. Then it is said that it may happen that a member of a society who has taken loans from the society as well as from outside *mahajans* may enter into intrigue with the latter and get an award passed by a Board to defeat the claims of the latter. I say this is impossible for the Board will not remain a mere silent spectator or a dumb statue. On the other hand if without going to the Conciliation Board the parties come to an agreement and as a result of that agreement, the whole of his property passes out of the hands of the debtor on account of debts from outside creditors, then, I do not know what purpose this clause will serve in the interests of the society. Then, as regards the question of complaints from any co-debtors, almost all the poor agriculturists are members of co-operative societies, and each and every one of them is heavily in debt. Therefore, nobody can complain against his fellow members if they can have their debts settled with outside creditors, because being himself involved heavily in debt, his interests in the society cannot arise at all. I do not, therefore, know what justification is there to extend the privilege to the financing organ of the members of co-operative societies. As each and every one of the members of a society is heavily in debt, there ought to be no fear whatsoever that the society will go into liquidation——

(At this stage, Khan Bahadur Muhammad Abdul Momin vacated the Chair, which was occupied by the Hon'ble President.)

Sir, in that case, Government may have the apprehension that not only one society, but society after society, will go into liquidation, and that in no time the whole movement will collapse. This the Government will not allow to happen and they must prescribe a specific which will save the situation without putting the societies to liquidation and Sir, I am constrained to say that if this movement fails, people will heave a sigh of relief. The co-operative movement is no longer a friend of them. The aim and object of the movement was to uplift the poor agriculturists in the outlying parts of the province. The organisers of the movement claimed to be their friends in need, and that they would always be with them in their prosperity as well as in their adversity. But we find that as soon as depression has taken hold of them, these people no longer pose themselves as their friends. If, therefore, you fail to extend the benefits of this Bill when passed into law to the people of co-operative societies then all the tall talks of your sympathy and good will for the poor villagers will be a huge mockery, and what is more, it can be described as an "abject hypocrisy." I say, Sir, that if the societies go into liquidation, people will rather welcome it. People belonging to societies themselves welcome liquidation, and why?—because as soon as a society goes into liquidation, its interest charges stop, and the debts of the members in a way are fixed once for all. On the other hand, being involved heavily in debt, as I have already said, there will be

absolutely no fear on the part of the members, if their societies go into liquidation. It is well known, Sir, how the societies have been realising their dues by coercion. Coercion has rather taken the place of co-operation. Your Co-operative Department has now become a coercive department. All sorts of *zoolum* are being perpetrated upon the people in the matter of realisation of their debts. One will shudder to think how the debtor members of societies are made to suffer. They are put to innumerable difficulties and inconveniences. They are made to remain standing under the scorching rays of the sun for hours together, they are sometimes made to stand up to their neck in water during the rains or in the winter, and to suffer such other *zoolums* if they fail to pay their dues regularly. And such unlawful acts are perpetrated under orders of men who are at the helm of affairs. If you take recourse to all sorts of injustice and to all sorts of oppression, who will be there to take care of your pet societies? What people now-a-days want is that they should be relieved at once of their burden of debts taken from the societies. It is a fact, Sir, that people who have taken money from *mahajans* are much better off than those who have taken it from societies because the *mahajans* are ready to remit the entire amount of their interests while the societies will not be content with anything less than what is their due. You claim to be their friends, you say you will better their economic condition; but what are you doing actually? It has been said that if the societies go into liquidation, the condition of the people will be worse than what it is at present. I cannot agree. If you want to keep the movement alive, and at the same time if you really want to give relief to members, the course that you have proposed will not serve the purpose. What I suggest is that enough funds may be placed at the disposal of the Registrar of Co-operative Societies by taking long-term loans at two and a half per cent. or three per cent. interest so that he can meet immediate demands from impatient depositors and at the same time give remission of interest to members of societies——

(At this stage, the member reached his time-limit, and had to resume his seat.)

Khan Bahadur A. F. M. ABDUR-RAHMAN: Mr. President, Sir, Kazi Emdadul Hoque has proposed the deletion of clause 27 and I am sure, Sir, that he has done this with a view to give relief to the members of the co-operative societies.

Sir, I can definitely assure my friends that I am in no way less anxious than my friends to give relief to the members of the co-operative societies. But, Sir, I do not know how the deletion of this clause will actually help the members of co-operative societies. Sir, the whole idea of this Bill is to scale down the debts of the agriculturists of Bengal by bringing an amicable settlement between the debtors and creditors. Sir, the members of co-operative societies stand absolutely on different footing. The society is the creditor and its members are the debtors and

these societies are generally managed by the debtor members, so the relation between the debtor and the creditor is not at all antagonistic but rather friendly. Under these circumstances, there may be apprehension of settlement between the society and the debtors which may adversely affect the interest of the financing bank and Sir, when the financing bank would see that a settlement between the society and the members has arrived at in a manner which is detrimental to their interest, they will have no other alternative but to put these borrowing societies to liquidation. Sir, I am sure nobody in this House would certainly like that 21,123 agricultural rural societies with a membership of 512,823 should go to liquidation and the properties of these members are sold for the realisation of the dues of these financing banks. Sir, I cannot understand where it stands on the way of a member of a co-operative society to get his debt scaled down both with the society and other creditors so long it does not adversely affect the interest of the financing banks. Sir, according to clause 27 a member of a co-operative society can certainly apply to the Debt Conciliation Board for the settlement of his debts but in case of only collusive settlement of debts this check has been provided. Sir, I do not see any reason why the Registrar of Co-operative Societies or any other person authorised by Government will not give his consent to a reasonable amicable settlement. They might only refuse extreme cases where they would find that by this sort of settlement the interest of the financing bank will greatly jeopardise. Sir, I think there is no reason why we should doubt the *bona fide* of the co-operative movement; after all it is a Transferred Department controlled by a popular Minister and in the Reform Council the members will have more control. Sir, the co-operative banks cannot be placed in the same category with the individual creditors because they deal with depositors' money and they have made a specific contract with each individual depositors to refund their deposits within certain period and they have also agreed upon to pay certain rate of interest. Sir, whatever favourable settlement a debtor may make through the intervention of this Board with their respective societies, the depositors of the co-operative banks will not be bound in any way by the decision of these Boards and the bank will be legally bound to refund the deposits on maturity. Sir, we all know that almost all the central banks of this province have practically invested all their capitals in the village societies and these societies likewise have invested everything to the individual members. Sir, it is known to every one of us in this House that co-operative movement in this province like all other provinces is passing through a very great crisis on account of continued depression and most of the central banks on account of this world wide depression are experiencing difficulties to maintain their credit and if at this stage we bring the members of the co-operative societies within the scope of this Bill without the safeguard as has been provided in clause 27 it will give rise to a suspicion in the minds of the depositors and they will think that the banks will

not be able to realise the money from these debtors for some time to come and Sir, I am sure this will very adversely affect the movement. I think, Sir, this may be one of the reasons why the Punjab has altogether taken out the co-operative movement from the scope of this Bill. Sir, many of us may have grievances against the co-operative movement but, Sir, I think by the deletion of this clause we shall not be able to remove those grievances. And I also think, Sir, that this is neither the place nor the occasion to discuss the merits and demerits of the co-operative movement of this province. Sir, I understand that the Co-operative Act of this province is going to be amended very soon and I think we will have ample opportunity to discuss at length about the co-operative movement on that occasion. Sir, my opinion is whether we keep this clause as it is, modify or delete it, it will practically bring no relief to the members of the co-operative societies unless Government is prepared to arrange for long term loan in an extensive scale with a very low rate of interest so that these financing banks who have lent money to the agriculturists on taking loan from individual depositors can scale down the debts of the agriculturists according to their repaying capacity and at the same time refund those depositors who are pressing very hard for their money. The problem of rural indebtedness cannot be tackled by establishing a few land mortgage banks here and there. The problem has become so acute and of such a magnifying nature that Government must come forward with much more liberal policy and should arrange for a net work of long term credit agencies, so that the agriculturists of Bengal can adjust their debts according to their repaying capacity.

Lastly, Sir, Kazi Emdadul Hoque has stated that Government officers have put in most of the deposits in these banks but I can assure him that it is not so and that the central banks have got very few deposits from Government officers. It is mostly the public that have invested their money in these banks.

Mr. P. BANERJI: Sir, I thought I would not take part in this debate for the simple reason that the Government will have the Bill passed anyhow, but after the eloquent speech of Kazi Emdadul Hoque I fail to understand why Khan Bahadur Abdur Rahman should have stood up and offered his support to the Hon'ble Member. This act, Sir, on his part, reminds me of a story, and the story is to this effect. Some boys were at play and one of them killed a spider. He at once ran up to a *pundit* to know what would be the consequence of killing a spider. The *pundit* replied that if he had killed a spider, his punishment would be that he would have to give so much ounces of gold. But when the boy replied that it was his son who had killed the spider, the *pundit* replied: "In that case, it means nothing. He will not have to pay anything." That illustrates the Bengali proverb যাকড় মারলে ধোকড় হয়। Here, also, Sir, it means the same thing, because when the Hon'ble

Member insisted on a former occasion on the inclusion of joint-stock banks, which are in a very moribund condition in the countryside, he claimed and emphasized that three points, viz., reasonableness, equity and justice, were always on the side of Government. May I know, Sir, with what face to-day he will defend the retention of this clause? The Bill is intended for the debtors, and therefore it does not matter whether creditors of the co-operative banks or joint-stock loan offices in the rural areas live or die, because his argument was that the loan offices to-day have become *zemindars*, so to say. If the arguments of my friend the Kazi Sahib are taken into consideration, it will be found that almost all the depositors in those banks are Government servants. Now, this fact has been contradicted by Khan Bahadur Abdur Rahman, who says that the major portion of this money are from the public in general. If the public in another case is to be defended, then why should not the majority be defended in this case as well? Therefore, as I was saying, the argument of Khan Bahadur Abdur Rahman cannot stand at all. Now, Sir, he was referring to the co-operative societies in Bengal. There are over 21,000 co-operative societies. We had a discussion about this movement in Bengal, and as it was pointed out during that discussion on the floor of this House some time ago, this movement has been an utter failure here and had not this institution been protected by Government, all these 21,000 co-operative societies which I may again repeat are all in a moribund condition would have died a natural death long ago. That is the position. The Khan Bahadur has also defended the case of these societies that they have entered into a contract with their depositors, but, Sir, can it not be equally argued on behalf of other depositors also, namely, depositors in the loan-offices all over Bengal, that there is also a contract that so much must be given by them to their depositors, and that their case should also be looked into a similar fashion by the supporters of Government? Therefore, I say, that after the arguments put forward by the mover of this motion for the deletion of this clause Government has no legs to stand upon to defend this iniquitous clause. I, therefore, submit that this clause should be deleted.

Maulvi SYED MAJID BAKSH: Sir, I would like to say at the very beginning that I support this amendment, viz., for the deletion of this clause, for this reason, if not for any other, that there should be harmony in the working of this Act. If you mete out differential treatment to different creditors and have one law and one procedure for one set of creditors and another law and another procedure for another set of creditors represented by the co-operative societies, it would point only to one conclusion, viz., that the working of the Boards will be unnecessarily and to a very great extent hampered. Sir, the last sentence of this clause says that the debt shall not be reduced without the previous approval in writing of a prescribed authority. This, Sir, means a good deal, and in many cases, perhaps, the Co-operative Department will not

come into line along with other creditors in giving relief to the debtors, who are agriculturists. But the very appearance of this section, and the possibility of cases in which co-operative societies will not come into line with other sets of creditors will make this provision so very opprobrious that the members of the Boards will find no interest, especially in cases in which the co-operative societies are concerned, in working the Act in the proper spirit. Sir, it is not an unknown fact that interest of co-operative societies is not very much less. The interest at which they lend money which is within 15 to 18 per cent. may be less in some cases, but that is generally the rate. And if that rate is allowed, and bearing in mind the fact that remission in the case of co-operative societies cannot be given because of the complicated machinery on which these societies are run, whereas in case of private creditors remission can be given, this very fact will stand in the way of creating an enthusiasm in favour of Debt Settlement Boards and it will make the debtors of co-operative societies very disinclined to come before these Boards. Sir, there are areas where there are no co-operative societies and in such places, of course, there cannot be any difficulty; but there are areas, especially in the district of Mymensingh, where co-operative societies are in abundance, and if co-operative creditors are immune from the powers of debt settlement by the Board, I do not know what face the Board will set down to the task of scaling down the debts of other creditors. It will naturally create difficulties in the way of approaching the Boards which are really intended to do service to the agricultural debtors. Therefore, for the sake of harmony and for the sake of efficient working of the Boards and more so for the purpose of creating the prestige of these Boards which will go a great way in making their operations a success that this clause should be deleted. As I undertand the argument of my friend, the Khan Bahadur, who has just spoken before me, it is that in many cases these societies have contracted with the depositors to give them a certain rate of interest; and I am told that even in that case there is no bar for these societies to reduce the rate of interest, and they have done so in many cases. I will assume for argument's sake that there is a contract between the depositors and co-operative societies to pay a certain rate of interest which cannot be reduced. We should not forget the fact that these societies are backed by Government and they work with the prestige of Government behind them. What difficulty is there for the Government to raise a loan of Rs. 3½ lakhs for the purpose of paying off these depositors? If that be done, the matter will be solved and there will be no difficulty about the stipulated rate and the Government might very well borrow money in the market at a very low rate of interest and pay off the creditors and also have money for paying off agricultural debts. In that way the agricultural debt question will be solved. But the presence of the clause here destroys the smoothness of the whole Act. You cannot have differential treatment for two sets of creditors without lessening the prestige of Government and of these

Boards. I understand that the majority of the work of the Debt Settlement Board will be in the nature of an amicable settlement, coercion will only be applied where it should be applied. I cannot contemplate cases in which the Board will go straight away for coercion. I contemplate cases where the Boards will try all avenues for debt settlement; otherwise there will be bad blood created between the parties as also factions in the villages, so this will be the principal work of these amicable Debt Settlement Boards. Now, this settlement cannot be effected with success if the Board begins by treating two sets of creditors in different ways. Private creditors will not agree and will say: "Here are other creditors of the co-operative societies and you are not lessening their debts, then why should you lessen our debts?",—and if the Board thinks that the debt should be scaled down, the co-operative societies will have to send the matter to the Board which is empowered under section 7 of the Act and that will be another fact which would lessen the prestige of the Board, as that will show the differential treatment which Government is giving to one set of creditors by enforcing this Act. It will prove a great impediment in the harmonious working of the Act. This is an Act which all agricultural debtors will hail, and you, Sir, have perhaps found by this time that the Praja Samitis all over Bengal have hailed this Act and some of us who would like to see the agriculturists relieved of their burden of debt also hailed this Act. So let us not go and work this Act with a bad blood and misgivings in our minds. Let us go and work it in the spirit in which it should be worked, with all the blessings which everybody can give it and we cannot dispense with the blessings and good wishes which are very necessary in the working of such an Act as this. Therefore, Sir, I submit that this clause should be deleted. Of course, the Boards, considering that the co-operative societies are institutions managed by Government and the Boards themselves being also managed by Government, will give due consideration to the difficulties of the co-operative societies. It cannot be assumed that the members of the Board who will be nominated by Government will run the Boards primarily against the interest of the co-operative societies. That is inconceivable; they will first of all deal with other creditors and incidentally if there is an application by a debtor of a co-operative society, they will give due consideration to it and might postpone it till the others are settled. But if there is a provision like this, it will act as an impediment. No settlement will be possible and, if at all any settlement is made, it will create so much party feeling and so much bad blood that this Act will be difficult to operate.

Maulvi ABDUL HAKIM: Sir, I rise to support the motion. Of all the clauses of the Agricultural Debtors Bill, clause 27, has attracted the universal attention of the whole country as being the most injurious provision in the whole Bill. An agitation has already begun throughout the province to attract the attention of the Government to the baneful effects of this provision. I am going to say a few words why the country's

voice has been raised so vehemently against this provision. Sir, it has been proposed in clause 27 that if a member of a co-operative society has also contracted any debt from any private money-lender and the Debt Conciliation Board brings about a settlement of all his debts then this settlement will not be valid except with the previous approval of the prescribed authority. Now from the fact that no such settlement under this Act would be valid except with the previous sanction of the prescribed authority, it generally occurs to our minds whether this previous approval in writing will be required after such settlement or it will be required before such settlement. If according to the directon of the said clause previous sanction in writing is to be given first and the settlement of the debts of such debtor is to be made afterwards, then will the framer of the Bill be pleased to explain on what basis the prescribed authority shall give its previous approval before the actual settlement is made by the Debt Conciliation Board. Before any explanation is given we must say that the words "previous approval" as mentioned in this clause has no meaning at all. If no settlement of debts of a member of a co-operative society is considered valid without the previous approval of the prescribed authority, no useful purpose will be served to empower the Debt Conciliation Board to be constituted under this Act to make a settlement of the debts of a debtor who is a member of a co-operative society and who has contracted debts only from that society. On the other hand, a clear provision might have been made in this Act that the Debt Conciliation Board should have no power to settle the debts of a debtor who is a member of a co-operative society and who has contracted debt only from that society. Now, Sir, if it is the intention of this Bill to give power to the Debt Conciliation Boards to settle the debts of a man who can be called both a member and a debtor of a co-operative society and who has contracted debt from a private money-lender also, it would not be just and proper to authorise the so-called prescribed authority to nullify the decision of that Debt Conciliation Board. I am giving an example to show how the real purpose of this legislation will be baffled, if the prescribed authority is given such power. Suppose, Sir, Jadab is a member of a certain co-operative society and he has contracted a debt of Rs. 200 from that society. At present his debt to the society amounts to Rs. 200 as principal plus Rs. 100 as interest and this Jadab contracted another debt of Rs. 100 also from his villager Jadu. Now he owes Jadu Rs. 300 including interest. Again Jadab's brother Madhab took a loan of Rs. 100 from the said Jadu on the same day and he now owes Jadu Rs. 300 including interest. Madhab without going to the co-operative society took a loan of Rs. 200 from Upendra which has now amounted to Rs. 300 including interest. Now Jadab and Madhab both applied to the Debt Conciliation Board for the settlement of their debts and the Board made settlements of their debts to the effect that out of Rs. 300 due from Jadab to Jadu, the Board settled Rs. 135 as Jadab's debt to Jadu and ordered him to pay the amount in fifteen

years by an equated annual instalment of Rs. 9 and out of his dues of Rs. 300 to the co-operative society the Board settled Rs. 255 to be paid in fifteen years by an equated annual instalment of Rs. 17. And as regards Madhab's debt to Jadu the Board settled that out of his dues of Rs. 300 Madhab shall pay Rs. 135 to Jadu in fifteen years by an equated annual instalment of Rs. 9; and as regards Madhab's debt to Upendra the Board decided that out of total dues of Rs. 300 Madhab shall pay Rs. 225 in fifteen years by an equated annual instalment of Rs. 15. Now if the prescribed authority nullifies the Board's settlement regarding Jadab, not only the Board's settlement regarding Jadab's dues to the co-operative society but also the Board's settlement of Jadab's dues to Jadu will be rendered void. In that case simply for becoming a member of the co-operative society Jadab has to bear the burden of his present debt of Rs. 600. Moreover, he has to bear the interest of Rs. 200 due to co-operative society till the day of repayment and he is also to pay the interest of Rs. 100 due to Jadu. On the other hand, as Madhab is not a member of the co-operative society his debt of Rs. 600 with interest up-to-date will be settled at Rs. 390 and he will be able to clear his debt in fifteen years by an equated instalment of Rs. 26 a year. If the result of clause 27 stands such as has been stated by the said example, it is to be seriously considered whether the public will be attracted towards the co-operative department or they will be afraid of the very name of the department. And if the public, I mean the rural public, is disgusted with the department, then it can safely be said that the village development scheme undertaken by Government will be a failure. Sir, I wish to draw the attention of the House to another matter and that is a matter to be very seriously looked into by the Government. That matter is the coercion that is being used by most of the employees of the Co-operative Department upon the members of the co-operative society. These members of the co-operative society are no doubt respectable and responsible persons of the locality and if you ask me as to how they are treated by the employees of the department, specially the bodyguards of the auditors, I wish to explain how they are passing their days and in what miserable condition they are in order to bring these facts to the notice of the Government.

Mr. PRESIDENT: It is not necessary at all.

Maulvi ABDUL HAKIM: After all death is better than insult. And in these days of dire economic stress and strain the members of the co-operative society should not be treated like cats and dogs to compel them to pay their dues beyond their capacity to the Central Bank. If Government are reluctant to believe these statements of mine, I request Government to be so good as to set up an enquiry committee to ascertain whether my allegations are true or not and, if my statements prove false after a thorough inquiry I shall at once resign my membership by way of punishment for making this false statement. I have already said

that this Bill is going to benefit the private money-lenders, 90 per cent. of whom practically gave up all hopes of recovering their loans. And if any debtors are to be ruined, it is the debtors of the co-operative societies of Bengal who will be so ruined. And if our brethren of the co-operative societies do not get any relief by this Act I am of opinion that the real object which the Government have in view will be defeated and a chaos may prevail in the country after the passing of the Bill. As far as I know there are more or less 25,000 co-operative societies in Bengal and there are 5 lakhs of debtors who have taken loans from the Central Banks of Bengal. Is it not the bounden duty of the Government to save this great number of wretched people from the cold clutches of their Central Bank creditors? Government have already included all the banking companies registered under the Indian Companies Act. In that way Government can do a great deal for relieving the debtors of the co-operative societies who are the worst victims of the creditors in these days. Instead of giving the maximum instalments to these debtors, shorter instalments may be given and rate of interest may be easily reduced. You all know that the Central Government has reduced the rate of interest on their own loans to Rs. 3 per cent. only and in England the present rate of interest on Government loans has been reduced to 1 per cent. In these circumstances, is it not the duty of Government to reduce the rate of interest on loans given by the provincial and central banks? If the interest is reduced, there would be no loss on the part of the Government, because Government have no money in the provincial and central banks. However, I earnestly pray that Government should give relief to the sufferers of the co-operative societies by omitting the section 27 of this Bill.

Mr. A. E. PORTER: Sir, I oppose this motion. I do not propose to enter into a defence of the Co-operative Department and I am glad that you have ruled the discussion on that point out of order but there appears to me to be such abysmal misapprehension as to this section and its effect that it is expedient that the situation should be clarified. The Hon'ble Member who moved the motion which we are now discussing has said that he opposes the provision because it prevents the members of the co-operative societies from obtaining any relief under this Act. That, Sir, is a misapprehension which I think nobody who has carefully read this section can possibly entertain. There is nothing in this section which prevents a member of a co-operative society from applying to a Debt Conciliation Board for having a determination made of his debt or from having his debt settled. All that this section requires is that, where a settlement has been made, before that settlement becomes operative the approval of a prescribed authority should be obtained to its being put into operation. In other words, after a settlement when a draft award is made that award shall be submitted to some authority prescribed by Government for approval. Members of this House are no doubt aware of the fact that the provisions in the Bill which they are

now considering are neither unprecedented nor are they so stringent as has been considered necessary in Bengal. In the Punjab, the Agricultural Debt Conciliation Bill excludes from the definition of debt in the Act debts due by members of co-operative societies to their societies. In the Central Provinces where the Act has been enforced and we understand successfully run the co-operative debts of agriculturists can only be conciliated with the approval of a prescribed authority, *i.e.*, the Registrar of Co-operative Societies. When Government received from the Board of Economic Enquiry, which is the "onlie begetter" of this Bill, the draft Bill for their consideration the provision which the Board of Economic Enquiry proposed was that no co-operative debtor should be permitted to apply for the conciliation of his debts without the approval of the Registrar of Co-operative Societies but Government have very considerably extended the scope afforded to co-operative debtors in the Bill now before us. They have also made a further alteration which I think this House will admit is to the advantage of co-operative debtors because it will tend to a very much greater expedition in disposing of the award by the Board, that is to say, that instead of prescribing the Registrar as the authority Government in the Bill propose to leave it open to them to prescribe any authority which they may approve of for the purpose of giving the previous approval which is required by this Bill. That is the fundamental misapprehension which I think those gentlemen who are opposing the provisions of section 27 are labouring under. As I said before there is nothing in the Bill preventing a member of the co-operative society from applying to the Board for the determination and settlement of his debt. There is no reason whatever to believe that if a settlement suggested by a Board is equitable and reasonable the prescribed authority will refuse to give approval to that award.

The reasons for having a provision of this kind in the Bill, I think, will be clear after a little consideration. It has been said that this Bill introduces a discrimination between joint-stock banks and co-operative banks. That is true: but there is no reason why there should not be any discrimination between organisations which are totally different in constitution, in legal status and in their methods of working. Members of this House are perfectly aware that the co-operative societies are on a very special footing in law. They are not money-making concerns; the dividends which they may pay to their shareholders are limited by law; and they depend for their success upon one of the rarer qualifications of humanity, namely, virtue. It is a commonplace of co-operative doctrine that co-operation cannot be a success unless the co-operators are virtuous and if co-operators are virtuous co-operation must be a success. As I said it is the only sphere of human affairs in which you are not only able to get a cash return for virtue but you must be absolutely certain of getting that return if you are virtuous.

In these circumstances there is no reason why you should consider that any principle is violated by preferential treatment to co-operative

societies compared with joint-stock banks. The House will realise how important it is that this section should be kept intact if they will for one moment visualise clearly what will happen if the section is expunged. The hon'ble member who spoke second has already indicated what the position will be and I only wish to elaborate that a little. The only persons who can come before the Board for conciliation have been defined in the Act; those who are agricultural debtors, so far as the co-operative societies are concerned, are the members of the agricultural credit societies, that is to say, the persons who are indebted to agricultural co-operative credit societies. They will come before the Board for the determination of their debts in a dual capacity, both as debtors and as creditors, and they will state what the amount of their debts is to their own society. That is the legal position. The Boards will have before them, as my friend Maulvi Abdul Hakim said, Jadab, Madhab, etc., appearing in a dual capacity, firstly, as debtors to their own society and secondly, collectively as their own creditors. That would not be particularly dangerous if there were a provision either here or elsewhere permitting to appear before the Board other persons than as Jadab, Madhab and so on, but there is no such provision. Section 9 (*a*) (*I*) which permits of application by persons jointly responsible for a debt cannot apply to primary agricultural co-operative societies with a view to having their debts to the Central Bank conciliated nor is there any provision in this Bill which will make it possible for a Central Bank even to appear before a Board in order to protect the interests of persons who are the real creditors of the society. Actually the people who are the creditors and whose interests are jeopardised under the Act will have no opportunity to appear before the Board.

Now, Sir, we are dealing with human nature, and it is only natural that in circumstances of that kind, when the debtor comes before the Board in a dual capacity—as his own creditor as well as a debtor—, he will be, to say the least, biassed in favour of himself as debtor. He will in a manner, collusively have his debts conciliated or possibly even reduced to nothing; but since that will be a matter purely of agreement between the legal debtor and the legal creditor as regards the legal debts, there is no reason why the Board should either refuse to give effect to this agreement or call for any further statement as to the actual effects of that composition. In other words, if the House votes for the exclusion of section 27, it is going to put upon the statute-book a measure which actually encourages, and gives incitement to collusion of the worst kind involving the interests of persons who are not parties to that collusive transaction and have no legal status and no opportunity of appearing before the Board which is going to give effect to collusive transactions of that kind. (MAULVI SYED MAJID BAKSH: But they are virtuous!) It is said, Sir, that they are virtuous. This is a complete misreading of the facts. If the co-operative movement is a failure—I do not say that it has failed—it is a failure because the co-operators

are not virtuous and, therefore, we are justified in assuming that they may take any steps they can to get out of their obligations.

Well, Sir, that is the first reason why you must have this section in the Bill. But, there is another reason also; and that reason is that it is quite true that if this section were removed, it would be possible for a co-operative debtor to obtain collusive settlement of his debt, by which it might vanish into thin air, but the consequence would not stop there. There has been, Sir, if I may say so, a certain amount of confused thinking indicated in the speeches as regards unlimited liabilities among the members of co-operative societies. Sir, the unlimited liability of a member of a co-operative society is a contingent liability. It is a liability which is not covered by this Act: it is a liability which cannot be taken into account when any proceedings under this Act are going on; it is a liability which only becomes actual when the society has been put into liquidation.

Now, Sir, members of this House will have little difficulty in visualizing what would happen in the event of a wholesale conciliation of co-operative debtors' debts by what I have described as virtually collusive proceedings. The central banks, the organisations in which have been deposited the savings of widows, the capital on which orphans are to be supported and the deposits of other persons who have come forward with the genuine intention of relieving distressed agriculturists, or giving them finances for their agricultural operations—those banks, seeing that their securities have evaporated, will be compelled—and cannot fail to be compelled—to put their societies into liquidation, and by thus putting the societies into liquidation the contingent unlimited liability of the members will become an actual liability upon this, the Board's award will cease to have any effect, and members of co-operative societies, who have obtained conciliation of their debts, will be in a worse position than they were before because as a result of their collusive action and as a result of the award they have received the central banks will have to put their societies into liquidation and the members will have to be sold up. I do not think that any member of this House can imagine that at the present stage it is possible to sell up a person who is indebted to an agricultural credit society for the debt which he has incurred without ruining him.

There is a third reason, Sir, why this section must remain. It is that there already exists a machinery, which is being put into effect for conciliating and reducing the debts of co-operative debtors. During the last year, the Registrar of Co-operative Societies in reviewing the situation laid down the following:—"It has become necessary to reduce the amount of the instalments towards the repayment of the dues and to extend the period of repayment." We further said that the borrowing rate of the central banks and societies should be reduced, and also that there should be a corresponding reduction in the rates of interest to be

charged to the members of the societies. Now, Sir, I say that that suggestion has been put into effect, and I am informed by the Registrar that, as a result of the action taken in the directions which he circulated during last year, a considerable reduction has already been effected in the interest charges for which members of co-operative societies are liable. The actual figures which he gives are before me, and I think that members of this House will probably be surprised to hear that the reduction in the annual interest charges demanded by the societies from their agricultural debtors is as much as Rs. 12½ lakhs. That is the first instalment, because, as members of the House know, you cannot put into effect a policy which requires a very complicated adjustment of dues throughout a long chain of organisations in a minute; but I think that those members of this House who are unbiassed will be compelled to concede that the Co-operative Department has at least understood the problem, and at any rate has made a beginning to deal with it in a manner which cannot fail to commend itself to all right-thinking persons.

I will only say one word more, Sir. It is presumably customary for grave suspicion to be expressed in this House of the motives and intentions of Government. (MR. S. M. BOSE: And *vice versa*.) There is no reason why members of this House should have any suspicion of the intentions of Government because Government are always prepared and ready to be judged by results. I am authorized to state that if this House permits this clause to remain as part of the Bill the policy of the Government is not to subject the co-operative debtors to any unfair discrimination as regards either their co-operative debt or their debts outside the societies. As regards the debts of members to outside creditors, the Co-operative Department, as a matter of policy, intend to put no obstacle in the way of debtors securing the advantages of the Act in so far as is consistent with the financial stability of the movement and the responsibility of the department in its quasi-fiduciary capacity to the persons who have contributed the funds from which this movement is financed. Why should hon'ble members of this House assume that the retention of this section, which has been inserted by Government and which they are supporting, should be used by Government to ruin the co-operative debtors? There is a kind of inconsistency in the arguments advanced by our hon'ble friends. They say in one breath that we are going to ruin the creditors and that by keeping this section in this Bill we are giving ourselves an opportunity of ruining the debtors at the same time. But, Sir, there is no reason to assume that this section will be operated to the disadvantage of co-operative debtors, and the only intention of placing this section in the Bill and of insisting on its retention is, first, that there should be no possibility of the Act being made use of to effect an unfair reduction of debt which will ruin persons who have contributed to the funds——

(At this stage the member reached the time-limit, but was allowed by the Chair to finish the speech.)

Sir, as I was saying there is no possibility of this section being used by Government for ruining the co-operative debtors, and the only reason for its inclusion is to ensure that in circumstances where collusion of the kind I have described is so easy, and so inevitable, in those circumstances, the persons who may endeavour to obtain advantage of their dishonesty shall be prevented from doing so, and that equitable settlement of debts as between co-operative and non-co-operative creditors can be secured. There is no reason to believe that if a settlement is reasonable, and fair on both sides, the prescribed authority will refuse his previous approval to it or that he will have anything to gain by refusing it.

Mr. SHANTI SHEKHARESWAR RAY: Sir, while I congratulate Mr. Porter on his maiden speech, I am afraid I shall have to differ from many of the conclusions which he has drawn from the reasons which he has placed before the House. In considering this clause we have to deal with two aspects: first, the disability that is imposed on the debtor who happens to be a member of a co-operative society, and, secondly, the special privilege it confers on the co-operative society as a body. Sir, I support the amendment moved by my friend Kazi Emdadul Hoque for the omission of the clause. It has been the attitude of Government that they have brought forward this measure in a missionary spirit, and the Hon'ble Khwaja Sir Nazimuddin hinted that this clause is a sort of touch-stone to those members of this House who have espoused the cause of the debtors and *raiyats*. If this Bill is a touch-stone for certain members of this House, I submit, Sir, it is nothing but a touch-stone as regards the intention and attitude of Government. Sir, the special privilege they want to confer on these co-operative societies can be explained only on one ground and that the ground of self-interest. If the Government had been so much disinterested and had brought forward this Bill in a missionary spirit we would not have found this clause in the Bill; and we would not have an official member of the Council, who spoke as if he had the authority of the Government of Bengal, supporting this clause. The fact is that while the Government of Bengal have no affection for individual *mahajans* or money-lenders or joint-stock companies, they are concerned with the co-operative credit societies and they have a moral obligation in this matter, because these societies are run under the supervision of the Government of Bengal. So far as their funds are concerned, I think that though the Government may not have advanced any money, they stand guarantee for a large sum of money in connection with some of these societies and banks. Well, Sir, as soon as the question of sacrifice comes in on the part of these societies the missionary spirit of the Government vanishes. They are no longer interested as to what happens to the poor agriculturists who are members of these societies and are debtors and who may get some benefit out of this measure, but they are concerned with the interests of the depositors.

If the Government of Bengal feel a moral obligation in the matter, it is their clear duty to raise a loan as suggested by some speakers and make good any loss to the depositors.

Sir, the argument as regards the Central Banks being the real losers and individual societies escaping and having no interest does not hold water. Primarily, the societies are legally responsible to their own depositors and if the Central Banks come in they do so in a secondary way. When they advanced the money they had the security. Their position is more or less like that of any other persons who deposit their money in the societies or any individual banks run by joint-stock companies. Whatever argument the Government may produce, there is no denying the fact that this provision is mainly to safeguard the interests of Government. I think, Sir, a better attitude is expected from the Government of Bengal. As a result of this measure Government are calling upon individual *mahajans* and joint-stock banks to make sacrifice, but it is for the Government of Bengal to give a lead in the matter and, if a sacrifice has to be made, to share in that sacrifice.

Sir, Mr. P. Banerji advanced another argument, that so far individual members of co-operative societies were concerned, their interests were safe. There is a provision that they could get the benefits from the Bill only on obtaining a certificate from the prescribed authority. What is the necessity of the provision of bringing in a prescribed authority to grant a certificate or a sanction before a debtor gets the advantage? Naturally when a society has to lose something, the sanction of the prescribed authority will not be given. But when it is a *mahajan* who is to render that service, I believe the prescribed authority will grant the necessary certificate. There should be no scope in this Bill for such special privileges.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, after the very able maiden speech of Mr. Porter, there is very little left for me to say. But I think that it is necessary that one or two misapprehensions should be removed. It is most unfortunate that an impression has been created amongst the public, especially the rural masses, that the debtors or rather the people indebted to co-operative societies, will not be able to take advantage of this Act and, therefore, they are very much concerned about it. Mr. Porter, on behalf of the Hon'ble Minister of the Co-operative Department, has assured the House, and through the House the masses that there is no reason or justification for any apprehension whatsoever that the benefits of this Act will not be available to the debtors of the co-operative societies. The only distinction or difference which has been made is that the awards of the Boards will be enforced with the previous approval and sanction of the prescribed authority. Now, Sir, this does not by any conceivable means suggest that in the case of any reasonable fair or just composition of debt Government or

the co-operative society will stand in the way. Just to illustrate the difference between the debt of a co-operative department and an ordinary money-lender or *mahajan*, I can cite the very excellent example which Maulvi Syed Majid Baksh gave us the other day, viz., that if a person lent Re. 1 at 37½ per cent. after thirty years the loan mounted up to Rs. 1 lakh. That, Sir, is the crucial test, that is to say, if Re. 1 lent for 30 years becomes Rs. 1 lakh, what will be the principal amount on that. It will be something like Rs. 50 or 60 thousand in 25 years. Now, it is very easy for any *mahajan* to give up 50 per cent. of that principal quite apart from the interest of Rs. 50 thousand. He will still by investing only Re. 1 and realise Rs. 25,000: whereas taking the same figure of Re. 1 lent through a co-operative bank at 15 per cent. in 30 years the principal will always remain the same, that is, Re. 1, but the interest may go on accumulating if it is not paid. So obviously in the case of a co-operative debtor it may not be fair to reduce the principal as it is only Re. 1, but you may play with the interest which has accumulated. So, this is not at all a fanciful illustration as the Kazi Sahib wants to suggest. This is what happens in actual practice on loans given at compound interest where the principal mounts up, and it is very easy for any creditor to come forward and say that he is prepared to give up even Rs. 50,000, *i.e.*, 50 per cent., as by that he gets Rs. 25,000. In the case of co-operative societies it is only the simple interest that accumulates and the principal always remains the same. So the difference is very marked in these two cases and it is absolutely unfair that these two cases should be placed on the same level.

Sir, Maulvi Abdul Hakim cited the cases of Jadu, Jadav and Madhab. There again, he was not correct as regards his mathematics. A debt of Rs. 200 at compound interest cannot be Rs. 300 and equal to the debt of a co-operative society of Rs. 200 at 15 per cent. simple interest. In the case of an ordinary debt with a *mahajan* Rs. 200 at compound interest will be something like Rs. 1,000 and not Rs. 300. That is the fallacy in his argument.

Sir, I now come to the case of co-operative societies. Co-operative societies were started for the benefit of agriculturists and, as Mr. Porter has said and clearly illustrated, not only there is a limit to the profit that co-operative banks can make, but under the Act a certain percentage of the profit has got to be spent on education, sanitation and other purposes; that is to say, the principle involved is that the major portion of the benefit should go back to the culivators—the debtors who are getting advantage of that: whereas in the case of a loan office or individual money-lender he can take the maximum profit. Now, Mr. P. Banerji made a great point of it. What is the difference between loan offices and the co-operative society? Some of the loan offices give 50 or 60 per cent. dividend, whereas in the case of co-operative societies 12½ per cent. is the maximum dividend that it can give.

So naturally when a person has been receiving 50 or 60 per cent. for five years he can afford to give up his dividend for 5 or 6 years.

Then again, Sir, another point has been made that Government are interested in these co-operative societies. Do members realise that the co-operative societies, apart from the departmental supervision exercised upon them, are entirely non-official organisations run solely by non-officials and people of this province: and do they realise on what lines the co-operative movement is run in Bengal, how the people of this province will be affected by the deletion of this provision—not only their prestige will go because they are run absolutely by non-officials but at the same time the masses will be affected? In the co-operative movement so far as Government are concerned they have no monetary interest whatsoever——

Mr. SHANTI SHEKHARESWAR RAY: What about the guarantee?

The Hon'ble Khwaja Sir NAZIMUDDIN: I am just coming to that. I hope my friend will have a little patience. Government have no monetary interest in the co-operative movement and individual investments of Government servants, even if they are accepted, cannot be more than 10 per cent. of the rest of the people of Bengal. Now the question of guarantee comes in. A guarantee was given to the Provincial Bank but that guarantee has never been used by the Provincial Bank and what is more, by the time this Act is in full operation that guarantee will expire. So far as the guarantee is concerned even in that extreme case the Co-operative Department is not concerned. The important matter is that the co-operative movement was started for the benefit of the agriculturists and if the agriculturists have not so far derived the maximum benefit out of it that does not mean that we should allow it to be ruined. The possibility of maximum benefit is there and therefore a thing which is designed to give the maximum benefit to the people of Bengal must be preserved. That is not all. Do people who have stood up here and spoken against the co-operative movement realise that so far as this Bill is concerned it is certainly going to protect the credit of the cultivator, that is to say, from the *mahajans* the debtors will not be getting the assistance which they have been receiving in the past and the only other alternative for the agriculturists is a temporary loan in case of emergency from the co-operative society, and if you allow, deliberately allow, that co-operative society to be ruined then what is going to happen to the agriculturist and in the long run who is going to be the loser? It is the agriculturist who is going to be the greatest loser.

Mr. P. BANERJI: Why, the award will give him ample relief.

The Hon'ble Khwaja Sir NAZIMUDDIN: We are discussing the question of existing debts. This Act is a temporary measure. Agriculturists, in fact everybody in the world, no matter in what sphere of society he may move, may have to have recourse to loan. Therefore some of the agriculturists will have to borrow money, and if you prevent the *mahajans* from lending money as you would do by this Bill for the time being to a certain extent, and at the same time do away with the other institutions that can advance the money, then what would be the position of the agriculturists. I suggest that anybody who has got the interest of the agriculturists at heart must take every step to protect the co-operative societies and the co-operative banks from being ruined. This provision in this Bill is there to safeguard this thing. As Mr. Porter has said steps have already been taken to reduce the rate of interest and the benefit has actually accrued to the persons in the lowest rung of the ladder in the co-operative movement, namely, the debtors. It is possible further to reduce it and steps are going to be taken in this respect and if possible to extend the time for equated payment. All these facilities are there and will be available. I do not see how there can be any question of allowing the people to get the benefit of this Act. One of the speakers suggested that why should these Boards make a dead set for the co-operative societies, and after all there is no reason to distrust the Boards in this respect. That is not the position; the Boards will not make a dead set for the co-operative debts but the apprehension is that a *mahajan* may not be agreeable to reduce his claim. If his debt and the co-operative debts are placed in the same position it is obvious that the co-operative debt cannot be scaled down in the same manner as that of the private *mahajans*. As I have pointed out, in the case of a loan office or a private *mahajan* the principle is different from the principle in the case of a co-operative society. The *mahajan* can afford to scale down his debt much more easily than a co-operative society as the latter has got a limit beyond which it cannot go. Naturally the *mahajan* might say why should I do so much while the co-operative society is doing so little and that will prevent the reduction of the debt of the cultivators as much as it should be and that is another additional ground for retention of the provision of this clause, as it is, at present. In view of these considerations, I suggest that the wrong impression which has been created ought to be removed. The people will get the benefit of the societies and they will be in the same footing as anybody else. The only thing is that before an award is made it will be necessary to take the permission of the prescribed authority and in the interests of the debtor and the creditor it is necessary that the co-operative movement should be preserved intact.

The question that clause 27 be omitted being then put, a division was taken with the following result:—

AYES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Bakah, Maulvi Syed Majid.
Banerji, Mr. P.
Chaudhuri, Babu Kisheri Mohan.
Fazlullah, Maulvi Muhammad.
Hakim, Maulvi Abdul.
Hoque, Kazi Emdadul.
Hussain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Maiti, Mr. R.
Momin, Khan Bahadur Muhammad Abdul.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Mr. Shanti Shekhareswar.
Rout, Babu Nosoni.
Samad, Maulvi Abdus.
Shah, Maulvi Abdul Hamid.
Tarafder, Maulvi Rajib Uddin.

NOES.

Bal, Babu Lalit Kumar.
Barma, Babu Promhari.
Basu, Babu Jatindra Nath.
Bose, Mr. S.
Bose, Mr. S. M.
Chakrabutty, Babu Nihar Chandra.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Maulvi Syed Osman Haider.
Das, Rai Bahadur Satyendra Kumar.
Faroqui, the Hon'ble Nawab K. G. M., of Ratanpur.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Hooper, Mr. G. G.
Kasem, Maulvi Abul.
Khan, Maulvi Abi Abdulla.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Mukhopadhaya, Rai Sahib Sarat Chandra.
Nag, Babu Suh Lal.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Rahman, Khan Bahadur A. F. M. Abdur-.
Roy, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray Chowdhury, Mr. K. C.
Reid, the Hon'ble Mr. R. R.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Roy Chaudhuri, Babu Nem Chandra.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Singha, Babu Kshetra Nath.
Stevens, Mr. H. S. E.
Townend, Mr. H. P. V.

The Ayes being 18 and the Noes 39 the motion was lost.

(Adjournment.)

The Council then adjourned till 2-15 p.m.

(After adjournment.)

Maulvi ABDUL HAMID SHAH: Sir, I beg to move that for clause 27, the following be substituted, namely:—

"27. Regarding any settlement under this Act, of the debts of a member of a Co-operative Society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, the prescribed authority shall have power to extend the period of instalments by five years at the maximum, regarding the debts due to the society, in special circumstances."

The member spoke in Bengali in support of his motion, the follow-

Mr. President, Sir, the money-lending business in Bengal was not regulated by any law, consequently the money-lenders were lending

money at an exorbitant rate on the one hand and the ignorant cultivator-borrowers who got a high price for their agricultural produce borrowed money at the proposed rate of the creditors and paid the debt in parts from the income of their agriculture.

But owing to the sudden fall in the prices of the agricultural commodities in 1929 the cultivator-borrowers' income became insufficient even to pay the zemindar's rent and other necessary expenses. Therefore, redemption of debt was altogether stopped. As a result the amount of debt has increased to such an extent that it has become absolutely impossible for them to pay the debts. Every one acquainted with the report of the Bengal Banking Enquiry Committee will support my view. And the Report of the Bengal Economic Enquiry Committee which is based on that report has led to the formulation of the Bengal Agricultural Debtors Bill, so that with due regard to the income of the cultivator he may be excused a portion of his debt and may be allowed to pay the rest gradually within a certain time. And the Government have accepted the Village Development Scheme to train them co-operation in agriculture and industry so that they may increase their income. A Village Development Commissioner has been appointed to put the scheme into practice.

But I am sorry to say that if clause 29 of the Bengal Agricultural Debtors Bill is passed unchanged into law it can be said without hesitation that the real object of the law will be altogether frustrated.

Sir, the purport of clause 29 is this: if any member of a Co-operative Society who has borrowed money from that society is also indebted to other money-lenders than whatever settlement the Debt Settlement Board might make for the repayment of his debt it will not be valid without the previous approval of a prescribed authority.

Sir, if this clause remains then the debtors who were members of the Co-operative Society and have borrowed money from it and have borrowed money from other creditors also will fall into two classes, that is, those about whom the decision of the Debt Settlement Board will obtain approval of the prescribed authority will enjoy the benefit of the new Bill and those about whom the decision of the Debt Settlement Board will be deprived of the approval of the prescribed authority. Because in their case not only the decision of the Debt Settlement Board about the money borrowed from the Co-operative Society will be cancelled but together with it the decision of the Board about the debt incurred from other persons will also be cancelled.

Unless this serious defect is cured the object of the Bill will be hampered. Before proving this I want to discuss what the Government have said and will say on behalf of this. Mr. President, probably the Government will say that generally the money-lenders have lent money at a very high rate but the co-operative societies have lent money at a much lower rate. And the money-lenders have lent money

from their own funds while the money which is lent by Co-operative Society is borrowed from different Central Banks. Moreover, the money which the Central Banks lend is lent on the joint responsibility of the members. Therefore, in Co-operative Society a man is a borrower on one hand and lender on the other, so that if his debt is lessened as a debtor he will have to make it up as a creditor. Under these circumstances there is no reason found at first sight to curtail the demand of the co-operative societies to the same extent as it is possible to curtail the demand of other money-lenders.

For this reason if it appears that the Debt Settlement Board have decided to give instalment to the debtors by curtailing the demand of the Co-operative Society and other creditors to the same extent but it is not possible to accept such decision for the stability and future of the society then the prescribed authority will not approve of it. As a result the decision of the Debt Settlement Board will be cancelled not only in respect of the debt of the Co-operative Society but also in respect of other debts. But the man with regard to whose debt the decision of the Debt Settlement Board is cancelled for being member of the co-operative society if the same man borrowed money from other people without being in touch with co-operative society he would be in no need of going to the prescribed authority for approval of the decision of the Debt Settlement Board. So he would free himself from the burdens of debt according to the decision of the Debt Settlement Board.

Sir, if owing to the existence of clause 29 such state arises will not the poor cultivators of Bengal try their best to keep aloof from the Co-operative Society. Therefore, a course should be adopted by which the Co-operative Society do not seem dangerous to the public, neither do the Co-operative Society suffer any loss owing to the decision of the Debt Settlement Board. This can be done if the prescribed authority decreases the rate of interest of the Central Banks, reduces the debt by distributing the share and the reserve fund of the village society amongst its members, and gives annual instalments for the repayment of the debt of the said society together with it adds the instalments of other debts given by the Debt Settlement Board, then both side is saved. And the way in which Hon'ble Khwaja Sir Nazimuddin has amended clause 23 by amendment No. 531 the debt of the co-operative societies can easily be realized by Government rulings. Moreover, the consequence (one of the great disadvantages) of clause 29 is this if once the settlement of debt of a debtor by the Debt Settlement Board is cancelled by the prescribed authority he can never again take advantage of the decision of the Debt Settlement Board for the settlement of his debt.

Mr. A. E. PORTER: Sir, I oppose the motion moved by the hon'ble member for two reasons. The first is that it is contrary to the

principle which I thought had been established by the last division. All the arguments which were advanced against the omission of clause 27 hold with equal force against the inclusion of a provision of this kind in its place. Secondly, Sir, as the section stands, there is nothing to prevent a prescribed authority from extending the period of instalments by five years or more than five years, except the question whether in any individual case such an extension of the period of instalments will be to the disadvantage of the debtors or of any co-operative society or of the co-operative movement. I do not think that it is necessary for me to reply in detail to the eloquent speech of the hon'ble member. I may merely say that this motion introduces a principle which will circumvent the decision which we have already reached in the last division and that it offers to the prescribed authority no further powers than he will have under the Act.

The motion was put and lost.

Maulvi ABDUL HAKIM: Sir, I beg to move that in clause 27, line 4, the word "previous" be omitted.

I cannot understand the meaning of the word "previous" as it stands in this clause. The section runs thus: "No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society shall be valid without the previous approval in writing of a prescribed authority." So I cannot understand how previous approval can be given to a settlement which will be made afterwards. If any approval is to be given, it should be given after the settlement has been made and not before it. In a manner, Sir, this previous approval is just like writing the Ramayana before the birth of Rama. (Laughter.) At any rate, I hold that the word "previous" is redundant or mysterious. Therefore, I hope the Hon'ble Member will see his way to do away with the word "previous" in this clause.

Mr. A. E. PORTER: Sir, I think that the hon'ble mover of this motion is suffering from a confusion of thought. As I explained this morning, approval comes in after the settlement of a debt. The debt will be considered, determined, and a settlement will be made, but that settlement will not become valid, in other words it will remain invalid, unless the approval of a prescribed authority has been obtained. Sir, in view of this explanation the hon'ble mover's contention disappears. I should also like to add that if the word "previous" disappears, you would have the possibility of the Co-operative Department or a prescribed authority stepping in at that stage after the award had been promulgated and render it invalid and infructuous; in other words, after 5, 6, or 7 years during which realisations have been made under an award, it would be possible for the prescribed authority to butt in

with a *futwa* that the award shall cease to have effect and all further action under it would be invalid. That is a contingency which the mover has not, perhaps, contemplated.

Maulvi ABDUL HAKIM: May I rise on a point of personal information, Sir? I want to know whether the word "settlement" means adjustment of the whole debt, or merely an application for settlement?

Mr. A. E. PORTER: Sir, if the member will read the section which refers to settlement, he will find that what comes first is an application; secondly, consideration of the application; thirdly, determination of debt; fourthly, settlement of debt; and, fifthly, the award. It is between the settlement of the debt and the award that previous approval is required.

The amendment was put and lost.

The question that clause 27 stand part of the Bill was put and agreed to.

Clause 27A.

Mr. P. BANERJI: Sir, I beg to move that clause 27A be omitted. My reason for doing so is that I think that the inclusion of this new clause is perhaps intended to harass the creditor again. I fail to understand the necessity of bringing in a new clause as 27A, viz., if a debtor does not present himself at the court, where proceedings are generally protracted, and allows the court by his default to decide the case *ex parte*. Then, why should he be given the benefit under these special circumstances? I think, Sir, the Hon'ble Member will admit that this will serve the debtors as an incentive to harass the creditors again and absent themselves from the court and subsequently make his appearance to re-open the whole proceedings. If he is not protected in this way, then, ordinarily, he will be present at the court and help the trying officer in ascertaining the real state of affairs and deciding what he thinks best. Now, Sir, he will be given protection under the proviso to section 18(*1*). That proviso says that the decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree. The Hon'ble Member here also includes the words "as between the parties to the decree." It might be contended that because this portion has been put in here, therefore, he should be given some latitude. If that be the trend of his argument, then why not omit this clause also? I consider, Sir, that this is not necessary. As I have said at the beginning, it will only serve as an incentive to harass the creditors. But if it does not exist, then naturally, as I have said, he will be present and take its decision. As the Government—I mean the Hon'ble Member—

has pointed out, the decree of the civil court will be conclusive evidence. Therefore, Sir, the inclusion of this new clause is mischievous and should be omitted. With these words, Sir, I move my amendment.

Mr. H. P. V. TOWNEND: Mr. Banerji, Sir, is more enthusiastic in the cause of the creditors than the representatives of the creditors themselves, unless he has recently become a creditor himself. (A VOICE: He is a banker.) The clause was added by the Select Committee in order to avoid an objection to the proviso to clause 18(*1*), where it is stated that such a decree shall be conclusive evidence. Some one said: "Is it fair that it should be conclusive when in the ordinary course of things there might be an application to have it set aside?" No new right is being given to the debtor here, and Mr. Banerji, in fact, is proposing that a right should be taken away, because he would in effect compel the debtor to make a choice between applying to set aside a decree which he feels to be unjust and applying for the settlement of his debts. There is no reason why any man against whom a decree has been made *ex parte* should be debarred from applying for settlement of his debts. That would be the effect of Mr. Banerji's amendment. (Mr. P. BANERJI: What guarantee is there that there will be an appeal?) There is no guarantee, but when the Board deals with these cases it will take into consideration all points of view, and if it is satisfied that a debtor is putting in applications merely to delay execution, that is in order to defraud the creditor, the Board will have the power to dismiss them, and when once the application is dismissed on this ground, that debtor can never put in any application again. That, Sir, I think, is equivalent to a guarantee.

The amendment was put and lost.

The question that clause 27A stand part of the Bill was put and agreed to.

Clause 28.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 28 before the words "No Civil or Revenue Court" the words "Except as provided in this Act" be inserted.

Sir, this is in effect the same amendments as that of which the Raja Bahadur of Nashipur gave notice in his amendment No. 602A but it goes further. He proposed that the words "except as provided for in section 23A" should be inserted at the beginning of clause 28, because clause 23A contemplates that an application should be made to a Court after proceedings have been started under this Bill and as it stands clause 28 would prevent this. When I was examining this amendment I noticed that under the provisions of clause 27A also there may be applications to a Civil Court. It seemed wise, therefore, to make the

wording wider than was proposed by the Raja Bahadur. This is in effect a drafting amendment because unless this clause is changed it contradicts other clauses of the Bill.

The amendment was then put and agreed to.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 28(*b*) the following be substituted, viz.—

"(*b*) any debt for which any amount is payable under an award except in accordance with the provisions of sub-section (*4*) of section 26."

Sir, this is a consequential amendment in effect. The Select Committee disagreed with the provision in the original Bill that when an award ceased to subsist a creditor might sue for the whole debt as it stood before the Board took any action or drew up any award; and, by altering the proviso to clause 29 they sought to prevent the creditors from recovering any amounts not included in the award. But the Bill as it stands does not carry out their intention. It would prevent any one who had started a civil suit before the application was filed, from suing for the balance of the original debt after the award ceases to subsist, but it would not prevent any one who had not started such a suit before the application from filing one when the award ceases. Obviously, it is necessary to put both classes of creditor on the same footing. Therefore it is proposed that the wording of this clause should be slightly altered to bring it into line with the provisions of clause 26(*4*).

The amendment was then put and agreed to.

The question that clause 28, as amended in Council, stand part of the Bill was put and agreed to.

Clause 29.

Mr. H. P. V. TOWNEND: I beg to move that in line 10 of clause 29 the words "or determines its amount" should be omitted and that in lines 11 and 12 the words "the existence or amount of" be omitted.

Sir, this is in effect a drafting amendment. The retention of the words "or determines its amount" would give ground for argument that clause 18(*4*) applies to the "amount" of the debt. In clause 18(*4*) it is laid down that when the Board has determined the "amounts of the principal" of a debt due from a debtor and "of the arrears of interest due" the decision of the Board should be final: that is, the decision that so much of the debt is interest and so much is principal is not to be questioned in any civil court or any other manner. Well, Sir, if we insert in this clause the words "or determines its amount," it would seem that, even if the Board did not proceed to make any award regarding the debt of which the amount was determined under clause 18(*1*),

their decision as to the amount would be final and not to be questioned anywhere, because the creditor would by this clause be debarred from bringing a suit. Thus the Boards would supersede the Civil Courts. This was never intended and the insertion of these words by the Select Committee was therefore an oversight. Thus the amendment, Sir, is purely a drafting amendment. The omission of the words "the existence or amount of" will follow as a consequence.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that the proviso to clause 29 be omitted.

Sir, this amendment is consequential on the amendment to clause 26(4) which has already been accepted by the House.

The amendment was put and agreed to.

Babu HEM CHANDRA ROY CHOUDHURI: Sir, with your permission I would like to omit the word "further" from the proviso which I am going to move, because the existing proviso has already been omitted. My motion would then run thus:—

"Provided that the Board may allow against the debtor such cost of the suit or proceeding as the Board considers reasonable and the cost so allowed will be a debt of the debtor."

Sir, the object of my motion is to make provision for a deserving creditor to get the cost of the suit in case the suit is stayed and the claim of the suit abates under clause 29. It has been provided in this Bill that if the debtor does not appear before the Board, then the petition of the creditor will be dismissed; so there will be a few creditors who will feel encouraged to come before the Board. It may so happen that at the time when a claim is going to be barred, a creditor may file a suit in the Civil Court, and the debtor knowing of it in order to harass the creditor may file an application before the Board and also pray for sending a notice to the Civil Court for stay of the suit. In that case it may so happen that the Board may consider it a fit case for allowing the creditor the costs of the suit. But under the Bill there is no provision which empowers the Board to grant such relief to the creditor. This Bill deals only with debtors and the liability of a debtor is defined in clause 2(*a*) and the costs until decreed cannot be a liability. So I have every doubt that in spite of the fact that the Board considers it reasonable that the creditor should get the costs of the suit, it will have no power to grant that relief to the creditor. In this view of the matter I propose this amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment on the ground that it will be very difficult for the Board to allow costs which might be allowed by the Civil Court. First of all,

in most cases the Boards will not be competent to assess the costs; secondly, it will be very difficult to say what the costs will be. On the other hand, if the suit has not been decreed the Civil Court will not allow any costs and the Board will not know what should be the costs which they should allow. Therefore, I do not think that any useful purpose would be served by providing this proviso. On the other hand, in considering a fair offer under section 19 or 20 the Board will take into account the costs which have been incurred; and if a person has incurred certain costs, the Board will not issue a certificate under section 20 or compel anybody under section 19 to agree to any agreement. In view of this, Sir, I oppose the amendment.

The amendment was then put and lost.

The question that clause 29 stand part of the Bill was put and agreed to.

Clause 30.

Babu KHETTER MOHAN RAY: I beg to move that in clause 30(*ii*), in the last two lines, the words "and three months have elapsed since such notice was given" be omitted.

Sir, clause 30 provides that no decree or certificate should be executed for the recovery of a debt included in an application under section 9 or in a statement under sub-section (*1*) or section 13 until certain conditions have been fulfilled. Now, under clause 30(*iii*) there is a prohibition that the decree should not be executed for the recovery of a debt under section 9 in respect of debts until all the amounts payable under the award have been paid. With regard to clause 29 if such award ceases to subsist under sub-section (*4*) of section 26 an application for the recovery of any amount which was payable under the award may, notwithstanding anything contained in any other Act, be made in a Civil Court within three years from the date on which the award has ceased to subsist. Under clause 30(*ii*) it has been laid down that no decree will be executed for a certificate, if put into execution, unless notice of such decree or certificate has been given to the Board in the prescribed manner and three months have elapsed since such notice was given. It is useless to wait for three months; as soon as a notice has been given the party is entitled to execute the decree or the certificate for the recovery of the debt when the award has ceased to exist. When the award ceases to exist there should be no prohibition against the execution of the decree. There is no reason why the party should wait for three months more for the execution of the decree or certificate. This is a simple reason. Simply a notice is quite sufficient to the Board that he is going to execute a decree. For this reason I move my amendment.

Mr. H. P. V. TOWNEND: I think Mr. Khetter Mohan Ray is somewhat confused about the objects of this clause. So far as I can

gather from his speech he thinks that clause 30(ii) applies only when an award has ceased to subsist. This clause is intended to cover the cases where the award is still valid, where the debtor is paying the amounts payable under it as they fall due but where he has not paid the rent which has become due after the award. The idea is that time should be given for the creditors to bring pressure upon him to pay the rent. It was originally proposed that powers might be taken to enable any one interested to pay the rent not only when the land is advertised for sale but at an earlier stage: but it was decided that there were strong objections to giving compulsory powers for this: there is nothing to prevent this procedure from being carried out amicably. When there is a suit or decree notice is to be given to the Board and the Board is to give notice to the people concerned; then the people concerned in the award would go to the debtor and insist on his paying or perhaps help him to pay. That gives him a chance of paying it before his land is advertised for sale. But obviously it is useless to leave this clause in at all if after the notice to the Board no time is allowed before the execution of the decree—no time for steps such as I have described to be taken by the Board and the creditors. This is purely a destructive amendment, though I do not think that it was intended to be such.

The amendment was put and lost.

The question that clause 30 stand part of the Bill was put and agreed to.

Mr. P. BANERJI: I beg to move that clause 31 be omitted.

In doing so I want to point out that hitherto the policy of Government has always been to take away the power of the civil court. Now I find there are two clauses (*a*) and (*b*). In section 14 it is sufficiently provided that unless it is proved to the satisfaction of the civil court that there is good ground for non-production of the document before the Board no document shall be admissible. I ask the Hon'ble Member whether the addition of these few sentences is not sufficient for the purpose in order to consider whether this clause cannot be deleted. I also notice that the Hon'ble Member has given notice of an amendment to delete sub-clause (*b*). The Select Committee has included another sentence here after the words "any decree of a civil court" "passed in regard to a debt after the date of an application under section 9." It is quite possible after the passing of a decree. The law's delay is a well-known fact. When the creditor goes to the civil court to obtain a decree he has to spend a long time and also a lot of money in the shape of court-fees, etc., but if an application is made just after the passing of a decree how the creditor is going to know that it has been made. There ought to have been sufficient safeguard in this respect. There is no such thing as that and the result will be that the creditor will be harassed unnecessarily. Therefore I propose that the clause should be deleted.

Babu HEM CHANDRA ROY CHOUDHURI: I want to say a few words in order to draw the attention of Government to the injustice that is going to be done to the creditors including the landlords by not accepting my amendment No. 606 and by allowing this clause to be passed in its present form. It may so happen that a landlord may institute a suit against a tenant but the tenant on getting notice of the suit files a petition to the Board and asks that a notice be sent to the civil court for stay of the proceedings of that suit. In that case the rent suit will be stayed and the claim of the landlord-plaintiff will abate. The effect of that will be that the Board will have no power under this Bill to grant the landlord-plaintiff any cost of the suit. The Hon'ble Member in reply to my motion told us that the Board will consider the cost of the suit when it will give an offer to the creditor as regards the debt but in the case of claim for arrears of rent, the interest will be so small that it will be no interest or will not cover cost of the suit and so I do not understand how the Board will give relief to the landlord even if the Board thinks that he ought to be given the cost. The landlord will lose if the tenant goes to the Board and prays for a notice to be sent to the civil court for stay of the rent suit. No provision has been made in this Bill to compensate the landlord-plaintiff. I want only to give the Board a discretionary power to give costs only in cases where the landlord deserves the cost; otherwise the Board will be powerless to grant any relief to the deserving landlords.

The Hon'ble Khwaja Sir NAZIMUDDIN: I do not know what he is talking about.

Babu HEM CHANDRA ROY CHOUDHURI: I am submitting before you that if this clause is retained and no provision is made giving discretionary power to the Board to give costs in deserving cases great hardship will be done to a number of creditors including the landlords. I have given my reasons in full and I hope Government will consider this point.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, as far as Babu Hem Chandra Roy Choudhuri is concerned, I think he has completely misunderstood the clause. Clause 31 only prevents a question whether an order of the civil court is contrary to what has been passed by the Board. Where the Board has given one order and the civil court has given another order and there is a conflict then the civil court order will not apply. But as far as the question of cost is concerned of which Babu Hem Chandra Roy Choudhuri has cited an example that will be included under section 9 if the Board makes an award. I go further than that. Supposing, for argument's sake, in this particular case the landlord does not get his cost. After all, the landlord is not making any sacrifice and even if he does make any sacrifice it does not matter

much. I do not admit that it is so in fact, but I think that one can argue like that. The proposal to omit clause 31 is, I think, a wrecking amendment. To make the Act workable, it is necessary that the civil court should not pass orders which may be in conflict with the award of the Board, and it will only mean that a debtor will have to go up on appeal to the High Court or to any appellate court to set aside an illegal order which has been passed against the award. Therefore, actually, clause 31 does not take away any other right but the right of passing an order on the part of the civil court: that is all that it intends to do. Therefore, I oppose this amendment.

The amendment was put and lost.

Babu KHETTER MOHAN RAY: Sir, as both the members who have given notice of an amendment to omit clause 31(*b*) are absent, may I with your permission move that amendment as my own?

Mr. PRESIDENT: Yes, you may.

Babu KHETTER MOHAN RAY: I accordingly beg to move that clause 31(*b*) be omitted. Clause 31(*b*) provides that if any decree is passed by a civil court in respect of a debt, the documents in respect of which being in the possession or under the control of the creditor, etc., it shall be considered a nullity. Now, Sir, it is inconsistent with clause 14. Clause 14 lays down some penalty for non-production of documents, but there ought to have been some penalty for non-production when asked by the Board to produce such documents. But here it has been accepted by this Council that no document relating to a debt regarding which a creditor has failed to submit a statement before the Board, shall be received as evidence in any court of law. A civil court will not accept evidence unless it is proved to the satisfaction of the civil court that there were sufficient reasons for non-production of the document before the Board. It has been left to the civil court either to accept or reject the documents which have not been produced before the Board and marked by the Board as required in clause 14. Now, Sir, here it has been laid down that if a decree is passed in respect of a debt, on the basis of that document which was not produced, that decree will be treated as a nullity. So, it is quite inconsistent with clause 31(*b*). I find that both the Hon'ble Member and Mr. Townend have realized this inconsistency in these two clauses of the Bill, and, therefore, they have tabled motions (Nos. 619 and 620) where they want to add certain words to clause 13(*b*), viz.—

"unless it is proved to the satisfaction of the civil court that there were sufficient reasons for non-production of the documents before the Board."

I leave it to the Hon'ble Member to say whether the addition of these words will remove the inconsistency. I have no objection if this inconsistency be removed either by deleting clause 31(*b*) or by adding certain words after sub-clause 31(*b*). But I personally think that it would be better to delete sub-clause 31(*b*) instead of making any addition. If we accept the amendment of the Hon'ble Member, it will run as follows:—

"it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the civil court that there were sufficient reasons for non-production of the documents before the Board."

I leave it to the Hon'ble Member to say whether it meets the deficiency. I think, Sir, the drafting, too, is quite bad; so it will be better to delete sub-clause (*b*) altogether. Moreover, there is a provision in clause 14 under which the document cannot be received in evidence unless it is proved to the satisfaction of the Board that there were sufficient reasons for non-production of the document before the Board. Now, Sir, in these circumstances, a civil court will not pass any decree whatsoever on the basis of that document unless it has been proved that there were sufficient reasons for the failure to produce the document. For this reason, Sir, I should like that this sub-clause (*b*) should be deleted altogether instead of some words being added with a view to nullify the effect of this sub-clause.

Mr. H. P. V. TOWNEND: Sir, I do not think that many words are necessary. The point is that the hon'ble member objects so much to the drafting amendment which we have tabled that he would prefer to see the whole sub-clause go out rather than accept our amendment. His only argument really is this that the sub-clause adds nothing whatsoever to the Bill because clause 14 prevents any one from going to a civil court and getting a decree on the strength of such documents. But there is always the possibility that some one will go to the civil court, suppress all mention of the proceedings before the Board, and get a decree in order to harass the debtor who would be put to the expense of an appeal to have the decree set aside. We have heard a lot about the harassment of creditors in this connection, but it seems to me that the more powerful a man is, the more likely it is that harassment will be done by him than to him. The creditor is generally more powerful than the debtor. So, sympathy with the creditor in this particular instance is out of place. There is a provision in clause 14 by which the documents could not be produced in evidence: but it is quite likely that they would be produced in evidence before Munsiffs who would not know anything of the proceedings of the Board or have

any particular knowledge of the sections of this Act, which would after all be to the civil courts an obscure little Act because they would rarely deal with it. The sub-clause lays down that a decree which under clause 14 would be illegal should be treated as a nullity. There can be no harm in that. There is no reason to encourage the creditor to go to the courts in such a case, unless of course it can be proved to the satisfaction of the court that he has got the right to go up. Why should the House be so sensitive about the feelings of creditors, and the success of creditors, who are trying to evade the Act? That would be most illogical. I oppose the amendment.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause (*b*), after the words and figures "as required by section 14" the following words be added, namely:—

"unless it is proved to the satisfaction of the civil court that there were sufficient reasons for non-production of the documents before the Board."

Sir, this is merely a drafting amendment to bring this clause into line with clause 14. The notice of this amendment was given on the strength of the minute of dissent put in by the Raja Bahadur of Nashipur, who, I believe, has also tabled an amendment to the same effect.

The amendment was put and agreed to.

Mr. PRESIDENT: The question is that clause 31, as amended, stand part of the Bill was put and agreed to.

Clause 32.

The question that clause 32 stand part of the Bill was put and agreed to.

Clause 33.

Mr. P. BANERJI: I beg to move that clause 33 be omitted.

Sir, clause 33 says that no appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act. Now, let us scrutinise what the Act provides. The Act provides that appeal may be made in the prescribed manner to an appellate officer to be appointed by the local Government; to this we must strongly protest. I may say here and now that we have now no faith in the executive Government. Sir, the Hon'ble Member was smiling when I used the expression "appellate officer" but if the Hon'ble Member will take the public opinion of the country he will

find that this attempt on the part of the executive Government to take away one after another the powers from the judiciary is resented by the public in general and there is a movement in this country that the judiciary must not be under any circumstances under the control of the executive. Sir, an important principle is involved here and I beg to submit that now-a-days Government is always trying to carry legislation through, that will undermine the influence of the judiciary in this country. Is it fair, Sir? They began with the criminal legislation and they are extending it to the civil side, because in criminal cases many a judicial officer passed appeals against the orders of their own people, that is, the executive and thus upset the whole trial. That is why the executive are attempting to undermine their influence by taking away the powers of the judiciary; that is my submission to you, Sir. So that, they are going to extend this practice from the criminal side to the civil side, as I have already said. What will be the result of this course of action? The result will be that we should lose faith in the judiciary which, however, the executive Government want to establish to-day more than ever. The result will be loss of income also for Government but I need not refer to this matter. The Hon'ble Member and in fact every member of this House present here know that whenever any scheme involving expenditure is brought forward by us, non-officials, Government's cry always is: paucity of funds.

Sir, the income which Government would ordinarily have received from these courts would vanish and that is a very important point for consideration. It is the normal procedure for every civilized Government to entrust civil matters to the judiciary and I do not understand why a deviation should be made in this case. Perhaps it might be to the interest of at least some of the members. Whenever Government profess to do something for the people in general, we know that there is something behind it. In the earlier part of the debate we insisted on Government to lay down some qualifications of the members of the Board and of the Chairman, but Government did not listen at all to our entreaties. Now Government comes forward in this proviso that an appellate officer appointed under this section shall be a person who has had such judicial experience as may be prescribed under the rules to be framed under the Act. We find that Government wants to do everything in their "blessed" rules, and to this we often protest vehemently. We say that when you are legislating, all these things must be clearly provided in the Act. Why should we give the Government a blank cheque? We notice also that the Government has not a clear idea of things particularly in this Bill which is evident from the large number of amendments which have been moved on the floor of this House. Sir, you will notice also that Government is not also definite in their action. If that is the position, we can certainly imagine what would be the position afterwards when the Boards will be established

in the countryside as they will be composed of members with no qualifications perhaps. We know this from the nominations that are made by Government to the local boards from time to time. Having that experience most members of the House have been suggesting to the Hon'ble Member in charge to put down some minimum qualifications of the members and Chairmen of the Boards, but Government has turned a deaf ear to this suggestion. Perhaps the Hon'ble Member's argument will be that I am under a misconception, because I am anticipating what he will say. I maintain that it is a bitter pill with a sugar coating. He has put here that the person should have some judicial experience. We fail to understand what sort of judicial experience he may have. A question was recently put—about two days ago—regarding the experience of the persons recruited to the Judicial Service and the reply that was given showed that some of these men had one, or two, or three months' experience. We, therefore, fail to understand what is meant by "judicial experience." In the absence of any definite statement, we feel that the Government attempts to take away the ordinary judicial procedure and stop all attempts on the part of the aggrieved people to have justice in the ordinary law courts. With these observations, I place my motion before the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: I have already pointed out that if this amendment is carried, it will mean that all the work of the Boards will be made useless by appeals to various courts. I, therefore, oppose this amendment.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I rise to support the amendment moved by my friend, Mr. Banerji. The Hon'ble Member in charge has nothing to say in reply but to trot out the familiar argument that if the amendment is accepted the whole Bill will be made unworkable. I am afraid the Hon'ble Member is under a delusion. He seems to think that his Bill is workable. Our position is that in spite of all the amendments which Government have brought forward at this late stage, good, bad or indifferent, there is very little chance of this measure being workable, because the Government of Bengal have deviated from the right course. Instead of making this measure of a voluntary nature, instead of appealing to the spirit of self-sacrifice on the part of the people of Bengal, they have introduced an element of compulsion, an element of uncertainty——

Mr. PRESIDENT: Mr. Ray, you should not forget that at the present moment only clause 33 of the Bill is under discussion.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I was pointing out the defects of the Bill.

Mr. PRESIDENT: That you can do on the last day if you wish and not at this stage.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I was dealing with the argument advanced on behalf of the Government that the Bill may be made unworkable if this amendment be accepted. I was going to point out that the Bill, as it is, is unworkable even if this amendment be thrown out. However, I bow to your ruling and shall reserve my general remarks for the last stage. The main objection to this clause has already been pointed out by Mr. Banerji and in spite of being charged of repeating the same arguments I would point out in short that it should be the duty of Government to do nothing that impairs the prestige of the Civil Court administration in the province. It should be the duty of Government to do nothing that shakes the confidence of the people in the accepted legal procedure in the land. Once you shake the confidence of the people in the ordinary legal procedure, once the impression gets abroad that the legal procedure which was introduced by British administration is to be dispensed with, and instead of there being a reign of law there will be something else, it will take years and years to re-establish that respect for law in the land.

On the motion being put, a division was taken with the following result:—

AYES.

Banerji, Mr. P.
Chaudhuri, Babu Kishori Mohan.
Kay, Mr. Shanti Shekhareswar.
Sen, Babu Hoseni.

NOES.

Ahmed, Khan Bahadur Maulvi Emaduddin.
Baksh, Maulvi Syed Majid.
Bal, Babu Lalit Kumar.
Banerji, Rai Bahadur Keshab Chandra.
Barma, Bai Shahib Panchanan.
Basir Uddin, Khan Sahib Maulvi Mohammad.
Bose, Mr. S.
Bose, Mr. S. M.
Chakrabutty, Babu Nihar Chandra.
Chanda, Mr. Apurva Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Chowdhury, Maulvi Achal Ghani.
Chowdhury, Haji Badi Ahmed.
Das, Babu Baraprasad.
Faroqui, the Hon'ble Nawab K. G. M., of Dacca-pur.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Guha, Mr. P. N.
Haldar, Mr. S. R.
Hooper, Mr. G. G.
Hussain, Maulvi Mohammad.
Hussain, Maulvi Latafat.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Leesan, Mr. G. W.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Raheem, Mr. A.
Ray, Babu Amulyadhan.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Reid, the Hon'ble Mr. R. N.
Rizbergh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Roy, Mr. Saileswar Singh.
Roy, Mr. Sarat Kumar.
Sachse, Mr. F. A.
Samad, Maulvi Abdus.
Singha, Babu Kshetra Nath.
Tarafder, Maulvi Rajib Uddin.
Townend, Mr. H. F. V.

The Ayes being 4 and the Noes 45 the motion was lost.

The question that clause 33 stand part of the Bill was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that for sub-clause (*1*) of clause 33A, the following be substituted, namely:—

"(1) The Local Government may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 9."

The object of this is merely to make the distinction between this clause and clause 34A more apparent. This clause as it stands is somewhat vaguely drafted perhaps. It was intended to provide for cases in which it is necessary to transfer an application from a Board which has not got powers under clause 7, and which could therefore only carry out voluntary settlement to a Board which had been given powers under clause 7. It is very much more convenient to say who shall order the transfers and it is proposed by this amendment to empower the Collector to order them.

The amendment was put and agreed to.

Mr. P. BANERJI: Sir, I beg to move that clause 33A (2) be omitted.

Sub-section (*2*) says that a Board to which an application is transferred under sub-section (*1*) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred. My submission to you is that when a particular application is transferred to a new Board it must start work from the very beginning instead of the stage at which it was transferred because the different Boards consist of different members. It may be argued from the Government side that in unfinished cases when a Magistrate or a Judge is transferred what happens: another Magistrate or Judge takes up the case from the stage at which it was left by his predecessor. It is also a fact that there are conscientious Judges who begin the cases from the very beginning. I consider that if it is not provided in sub-section (*2*) the result will be that the new Board will always begin its function from the very stage at which the cases were left.

The Hon'ble Khwaja Sir NAZIMUDDIN: I rise to oppose this in view of the scheme of the Act. It is very necessary that this provision should be there because there are Boards that will have special powers and before them the cases will be transferred. To require the new Board to start from the very beginning the preliminary stages which have been completed before the non-compulsory Board is an absolute waste of time. Therefore, this clause is necessary and should stand.

The amendment was put and lost.

The question that clause 33A as amended stand part of the Bill was put and agreed to.

Clause 34.

Mr. PRESIDENT: I want to draw the attention of the House to amendment No. 631. It appears that this motion is out of order as we cannot omit the whole clause 34 dealing with appeals as appeals have been provided in several clauses of the Bill. So, I rule it out of order.

Babu KISHORI MOHAN CHAUDHURI: Sir, I beg to move that in clause 34(*1*), in the first three lines, for the words "an appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the Local Government against," the words "An appeal shall lie to the District Judge against" be substituted.

My object is that a separate appellate arrangement should not be made as in the case of union board matters the appeal lies to the District Judge. Here there is an appellate authority for the district for deciding questions of amicable settlement and also of compulsion if necessary and I think these questions should go to the District Judge. As a result of the passing of this Act much of the work in the Civil Court will diminish and the District Judge will have ample time to hear these appeals. So, another costly machinery should not be set up. There is a proposal that the Civil Procedure Code and the Evidence Act should not apply to these cases but as a certain amount of compulsion is going to be used there may be cases in which it will be necessary to apply them. As regards that there is a separate clause and we will discuss that matter when that will be moved. For the present what I beg to suggest is that a separate costly machinery should not be set up for hearing appeals against the decision in which thousands and thousands of rupees will have to be considered. So, I press that the District Judge should be appointed to hear these appeals.

Mr. H. P. V. TOWNEND: I gather that Kishori Babu's real object is economy. He thinks that it is cheaper to use the District Judge than to use an officer of the rank of a Munsiff. This is not so. The District Judge is paid more than a Munsiff. If a District Judge is allotted for this work he cannot do any other work at the same time. District Judge is not a gentleman of leisure, he is very busy and although there may be diminution of work in the civil court on account of this Bill I do not suppose that the work of the District Judge personally will be very greatly reduced.

Babu KISHORI MOHAN CHAUDHURI: But he hears union board appeals.

Mr. H. P. V. TOWNEND: The provision that there will be special appeal officers is not a new thing. It has been accepted in principle in other Acts. There are special judicial officers under the Bengal Tenancy Act, and, under the Land Acquisition Act and the Calcutta Improvement Trust has got a Special Tribunal in Calcutta. For such special work it is convenient to have special officers. Work under this Act will not be carried out in accordance with the Civil Procedure Code or the Evidence Act and there is no reason why we should bring in the District Judge.

The amendment was put and lost.

Babu KHETTER MOHAN RAY: Sir, I beg to move that in clause 34(*1*), in line 2, after the words "Appellate Officer," the words "who shall not be below the rank of Subordinate Judge" be inserted.

The objection raised by Mr. Townend against the District Judge being appointed is not applicable to the Subordinate Judge. There will be a diminution of work in the civil court after the passing of this Act. In the civil courts 75 per cent. of the suits which are now instituted and decided by the civil courts relate to debts and to rents and consequently practically many of these Subordinate Judges and Munsiffs will be relieved and there will be no work for them. In these circumstances there cannot be any objection to a Subordinate Judge being appointed an appellate officer. Besides though for the time being the law relating to the relation between a creditor and a debtor under the Contract Act or the Transfer of Property Act and other connected Acts are abrogated yet there may arise certain questions as regards marshalling and so on for an equitable arrangement between a creditor and a debtor which will be better dealt with by a Subordinate Judge who has wide experience of these cases and who will be able to do justice in every case that comes to him. He will be able to deal with these cases more expeditiously than any other officer who has no experience of the civil court.

With these remarks I move my amendment.

Babu PREMHARI BARMA: Sir, I beg to move that in clause 34(*1*), in line 2, after the word "appointed" the words "from amongst members of the Judicial Service or members of the Bar of at least ten years' standing" be inserted.

The members of the arbitration Board will not necessarily be members of the judicial service and men having knowledge of law. If in the appellate stage also the appellate officers be not men of sufficient

legal knowledge then I think in many cases there will not be any justice done, specially in cases where intricate questions of law will be involved. Hence it is desirable that at least the appellate officer should be an experienced judicial officer or a member of the Bar of at least ten years' standing.

With these few words I beg to commend my motion for the acceptance of the House.

Dr. NARESH CHANDRA SEN GUPTA: I beg to support this motion of Mr. Khetter Mohan Ray. I am not at all impressed by the observations of Mr. Townend that the proceedings before the Boards not being of a judicial character, not being of an ordinary judicial character covered by the Civil Procedure Code or the Evidence Act, there is no sense in appointing a judicial officer of the rank of a District Judge or Subordinate Judge to hear appeals. But the work to be done by the Board will require men with knowledge of those laws in some respects and the Bill itself provides that the Board will have regard for the Transfer of Property Act in the adjustment of rights of the creditor and the debtor so that the latter will be in a large measure done on the principles of arbitration rather than of judicial decision. These things will require a judicial mind which is capable of dealing with appeals and which has experience of dealing with appeals. The reason of asking for a Subordinate Judge rather than a Munsiff is that a Munsiff is a judicial officer whose experience is confined to original suits. A Munsiff is a judicial officer whose experience is confined mainly to original suits. Disposal of appeals means experience of a different character. The Subordinate Judges have that experience but the Munsiffs have not. A greater part of the work of the Sub-Judges is the hearing of appeals and on the ground of economy I think it will be eminently desirable that the appellate officer should be of the rank of a Sub-Judge. I am personally not at all in favour of a District Judge being an appellate officer. Mr. Townend has said that it will not be cheaper to have the work done by a District Judge, because every hour of a District Judge's time is costlier than an hour of an inferior judicial officer. Probably the same argument might apply here and it might be said that every hour of a Subordinate Judge is more costly than that of a Munsiff. But economy will not lie in the salary of an officer but in the amount of disposal of appeals. A Subordinate Judge who is daily disposing of hundreds of appeals——

Maulvi SYED MAJID BAKSH: A Sub-Judge cannot dispose of a hundred appeals daily.

Dr. NARESH CHANDRA SEN GUPTA: As my friend is such a stickler for words, I would say that a Sub-Judge has a great aptitude

for disposing of appeals. He disposes of hundreds of appeals. We lawyers know what it is to argue an appeal or a case before a Bench which is competent as distinguished from a Bench which is not so competent. The Judge who has got the necessary experience and legal knowledge disposes of a matter in ten hours which another man who does not possess the necessary attainments takes many days to do it. That is the experience of lawyers. When the award of a Board goes to a Sub-Judge and he looks at the award and the facts he will be able to come to a decision more quickly than a person who has not got that experience. I think Government will certainly be well-advised to insist on Sub-Judges and will be willing to accept this amendment. Even if they do not accept this amendment, I think at any rate they should not go below Sub-Judges.

Mr. H. P. V. TOWNEND: I gather that Dr. Naresh Chandra Sen Gupta objects to my not having entered at great length upon arguments against the amendment put forward by Babu Kishori Mohan Chaudhuri. Sir, I only answered the particular points which were mentioned in Kishori Babu's speech. I need hardly remind the House that the whole of this matter was dealt with a short time back, that there were many speeches from all sides of the House, and that there was a division upon it. This division was actually in connection with motion No. 33-34, and was lost by 27 votes against 56. In the original debate which led up to the division, all the arguments which have now been put forward by Dr. Sen Gupta, were dealt with and fully answered. It does not seem at all necessary that I should again go into all the details which were then traversed. Government were not prepared then to accept the motion and, if we could not do so then, to accept it now, after the result of the decision to which I have referred, would surely be an insult to this House; Government certainly cannot accept the amendment now. It was pointed out then (though it is rather difficult for me at a moment's notice to recall to memory all the arguments used) that it was not known how many Boards would be actually formed, how many appellate officers would be needed and whether a sufficient number of Subordinate Judges would be available and that at the very beginning at any rate it might not be necessary to use officers of such experience. Some such arguments were brought forward but I am sorry to say that I did not codify them so that I can read them out in a convenient form. The fact is that the House discussed every possible argument from every possible aspect and decided on those arguments; and the principle was undoubtedly accepted that Government should be left a free hand in appointing the best appellate officer available, and not be compelled to appoint any officer who was unnecessarily expensive. We want the Act to work; at the beginning it may be possible to work cheaply, though later on more expensive officers may be necessary.

The whole thing was discussed at great length and no further discussion, I submit, is really needed.

The amendments were put and lost.

Adjournment.

The Council was then adjourned till 11 a.m. on Tuesday, the 17th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Tuesday, the 17th December, 1935, at 11 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the three Hon'ble Members of the Executive Council, two Hon'ble Ministers (the Hon'ble Khan Bahadur M. Azizul Haque being absent), and 82 nominated and elected members.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

(The Council resumed discussion on the Bengal Agricultural Debtors Bill, 1935.)

Maulvi ABUL QUASEM: Before moving the amendment that stands in my name, I should like to make a slight alteration in it, with your permission. I want to omit the word "or" between the words "award" and "certificate" and insert the words "failure or abuse" after the word "certificate". The amendment would then read as follows:—

"That in clause 34(*1*), lines 2 and 3, after the word "Government," the following be inserted, namely:—

"within thirty days of the date of the decision, order, award, certificate, failure or abuse, referred to in this sub-section."

Mr. DEPUTY PRESIDENT: Has Government any objection to that?

The Hon'ble Khwaja Sir NAZIMUDDIN: I have no objection to his moving the amendment.

(At this stage, the Deputy President vacated the Chair which was taken by the Hon'ble President.)

Maulvi ABUL QUASEM: As I have already said, Sir, I should like to move this amendment in a slightly modified form. I beg to move that in clause 34(*1*), lines 2 and 3, after the word "Government," the following be inserted, namely:—

"within thirty days of the date of the decision, order, award, certificate, failure or abuse, referred to in this sub-section."

Sir, mine is merely a drafting amendment, and so far as it goes, I do not want anything substantive. The Bill, as originally introduced, did not provide any time-limit within which an appellate officer would be able to admit an appeal. The omission was supplied by the Select Committee in the shape of sub-clause (*1a*). Sub-clause (*1*)(*e*) of clause 34 runs as follows: "Any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers." Against this also, an appeal is provided to the appellate officer. When I gave notice of my amendment, I had in my mind only the words "decision," "order," "award," or "certificate." Thereafter, I realised that in sub-clause (*1*)(*e*) there were the words "failure on the part of a Board to perform its functions under this Act or any abuse by the Board of its powers." I think, therefore, that there may be an order which can be interpreted as failure on the part of the Board to perform its function or abuse by the Board of its powers. Therefore, the words "decision" or "order" or "certificate" might not cover sub-clause (*1*)(*e*), and that was why I wanted to move the amendment in the modified form.

Under the Civil Procedure Code, there cannot be an appeal from an order or decision unless an appeal is actually given by law. Here, the right of appeal is given by law, and rightly, therefore, there must be some provision for a time-limit within which the appeal must be made. I feel, Sir, that the clause, as it stands, does not provide for any time-limit for an appeal against any failure on the part of a Board or any abuse by the Board of its powers. It is a recognised principle that whenever there is a right of appeal from anything done or omitted to be done, there should be a time-limit, because that would bring a finality to the proceedings. People who have been feeling aggrieved on account of a certain decision given by a Board should not be allowed to appeal after the lapse of indefinite length of time, and the Board should not be made to answer particular charges brought against them after a long time. I feel that sub-clause (*1*)(*e*) should be brought within the purview of the time-limit. It appears that in case

of any failure by the Board to perform its functions or any abuse of its powers, there would be no time-limit, that is to say, a man, who considers himself aggrieved on account of the failure on the part of the Board or on account of any abuse by the Board of its powers, will be given unlimited time within which he can come before the appellate officer to make an appeal. That, I think, is wrong. Whenever an appeal is provided, there should be a time-limit. In clause (1) you have provided that an appeal may be made in the prescribed manner to the appellate officer, and I suggest that the time-limit may be shown there in order that it may catch the attention of the people at once. That is why I want to transfer the provision about time-limit to clause (1) at the very beginning.

Sir, I commend my motion to the acceptance of the House.

Mr. S. M. BOSE: Sir, I agree in a very large measure with what the last speaker has said, but the difficulty is this. Sub-clause (*1*)(*a*) says:—

"An appeal may be made in the prescribed manner to an appellate officer to be appointed by the Local Government against (*a*) any decision, order, etc."

Now, there is something positive to start from, whereas section 34 (*1*)(*e*) says something negative, namely—

"(*e*) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers."

That is something negative, Sir. You cannot say that on any particular date there has been a failure to perform its functions. It may be that the Board has been all along abusing its power. It is difficult, I think, to fix any particular date when there will be a failure. My friend has also referred to the Civil Procedure Code. There is, I believe, a date on which a Court has passed a wrong order. We have there a starting date, but here in connection with "failure" or "abuse of power," I cannot understand how there can be any particular date. I quite feel that a time-limit ought to be placed upon all appeals, but I do not see how his amendment, as it stands, can improve the position.

Mr. H. P. V. TOWNEND: Sir, Mr. Abul Quasem started and ended by saying that this was a drafting amendment, but every word he said proved that it was very much more. What he wishes is to have a change in the procedure contemplated. This amendment can only work if a programme is laid down under the rules by which a Board must finish the particular stages of each case by a particular date; otherwise, there is no possible date on which a failure to take action occurs. The clause was inserted to deal with the possibility that the procedure under this clause might be used merely to harass

the landlord. The idea was that a tenant who owed rent might put in an application, and then the Board might deliberately refrain for three or four years from passing any order, and the landlord during that time would be unable to recover his rents or to do anything. Therefore, it was arranged that in such a case the person aggrieved might go to the appellate officer and get an order that the case should be taken up and dealt with. It is very difficult to say, at what particular stage the delay is such, that a remedy of that sort is needed—at the outset, there might be hundreds of applications before a Board and a delay which is very reasonable in the early stages of the Board's work would be extremely unreasonable after the first rush of applications had been dealt with.

The next point is this. Suppose, a thirty-day limit is fixed as the time for an appeal against the failure by the Board to take necessary action, and suppose, the man does not realise that the crucial stage has been reached (nothing remarkable would have happened to draw his attention to it) and that he appeals only when the delay becomes intolerable: Then he would be told that if he wanted to make an appeal he should have appealed perhaps a fortnight earlier. What would be his remedy? There would be no remedy at all. The Board which had done something definitely wrong would be confirmed in its wrong-doing. That would not encourage efficiency of work, and the Bill would be in danger of not working smoothly at all, if this amendment be accepted.

The amendment was put and lost.

(New amendment.)

Mr. H. P. V. TOWNEND: Sir, I beg to move that in the first line of clause (*a*) of sub-clause (*I*) of clause 34, the words "under this Act" be inserted after the words "of a Board" and in the second line the words "under sub-section (2) of section 25 or section 26" be substituted for the words "under this Act."

Sir, this is a drafting amendment. The position, as the clause stands, is that people could have a choice of appeal. It might be said that any sale in connection with clause 21, 25 or 26 is a sale "under this Act," and that the appeal about it might be made to the Appellate Officer, although, properly speaking, it would be a sale directly under the Public Demands Recovery Act which has provision for appeal to suitable authorities. The "Appellate Officer" would not be so competent to deal with such matters and there is no reason why he should be asked to do so. It is proposed that appeals to the Appellate Officer appointed under this Act should be appeals from things done by the Certificate Officer directly under the Act, and these things are, briefly, the grant of time under clause 25(2) and the distribution of sale proceeds, etc., under clause 26. There appears to be nothing else which is

done by the Certificate Officer purely under this Act. The clause would then read as follows:—

"An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the Local Government against—

(a) any decision or order of a Board under this Act or of a Certificate Officer under sub-section (2) of section 25 or section 26,.....etc."

The amendment was put and agreed to.

The question that clause 34, as amended, stand part of the Bill, was put and agreed to.

Clause 34A.

Mr. H. P. V. TOWNEND: Sir, I beg to move that for clause 34A the following clause be substituted, namely:—

"34A. Whenever it appears to the Appellate Officer that for the ends of justice it is expedient to transfer from one Board to another an application made under section 9, he may order that the application be transferred to such Board as may be specified in the order and unless he otherwise directs, the provisions of sub-section (2) of section 33A shall be applicable to the proceedings in connection with such application."

Sir, this is purely a drafting amendment. I explained the necessity for it when I was dealing with clause 33A yesterday. It is merely a question of improving the wording of the clause.

The amendment was put and agreed to.

The question that clause 34A, as amended, stand part of the Bill, was put and agreed to.

The question that clause 34AA stand part of the Bill was put and agreed to.

Clause 35.

The question that clause 35 stand part of the Bill was put and agreed to.

Clause 36.

Mr. H. P. V. TOWNEND: Sir, I beg to move that in clause 36 for the words beginning with "Subject to any rules" and ending with "as it thinks fit," the following be substituted, namely,—

"Subject to any rules made under this Act—

(a) a Board may, on an application made by any person interested, review any decision or order passed by it and pass such order in reference thereto as it thinks fit;

(b) an Appellate Officer may, on an application by any person interested, review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit."

Sir, this amendment to clause 36 is suggested in view of the amendment No. 662 of which notice was given by Babu Hem Chandra Roy Choudhuri. He realised that it was necessary that an appellate officer should have power to review any mistake which he makes in an order, and his amendment brought the point to our notice. The correctness of his view was obvious. The Legislative Department, however, advised that it would not suffice to accept the amendment, because the wording of the clause would be defective. The words "passed by it" and "as it thinks fit" in the clause could not apply when the review was by the Appellate Officer. This is, therefore, a drafting amendment to include the point raised by Babu Hem Chandra Roy Choudhuri.

The amendment was put and agreed to.

The question that clause 36, as amended, stand part of the Bill was put and agreed to.

Clause 36A.

Mr. SARAT KUMAR ROY: I beg to move that clause 36A be omitted.

Sir, I admit that the intention of this clause is to simplify the procedure. But we ought to remember that, after all, the proceedings before the Board shall be judicial proceedings. I may point out to the House that this has been clearly admitted in clause (41) of the Bill also. Under such circumstances, I wonder why the fundamental rules of Evidence as laid down in the Indian Evidence Act, 1872, should be ignored by the Board in conducting proceedings before it. Sir, it may be said that the Executive Government intends to incorporate the necessary provisions of the Indian Evidence Act into the body of the rules they will frame. But I do not think that is a sound policy to adopt. The Evidence Act of 1872 unquestionably embodies very sound judicial principles in a masterly way, and I doubt very much whether any attempt on the part of the Executive Government to invent a new code of their own will succeed, or the latter may claim to be a simpler one, or will contain any better principle. Indeed, the rule-makers can hardly claim to possess such eminence in the subject as the authors of the Evidence Act undoubtedly possessed.

Moreover, Sir, these rules of evidence and the rules of procedure have grown to be so well known in our country that even ordinary litigants can conduct business in conformity with their provisions. Besides, Sir, they are legislative enactments passed by the Central

Legislature. I do not think it is at all fair that their function should be usurped by the rule-making officers, or it is within our competence to ignore these Acts passed by the Government of India.

So, Sir, I think we would all agree that the idea underlying this clause is not only revolting to our present ideas, but it is highly dangerous to depart from the existing methods of conducting judicial proceedings. For these reasons I hope the House will agree with me and delete these clauses.

Babu JATINDRA NATH BASU: Sir, I support the amendment just moved. Sir, the proceedings which may take place under this Act are expected to be proceedings in which on the materials placed before the Board or the appellate authority a decision will have to be arrived at and the materials will have to be thoroughly sifted for that purpose. Now, under what rules is that going to be done? If you do away with the Evidence Act and the Civil Procedure Code, difficulties might arise in this way. It may be necessary for a poor debtor to have a document produced—a document which might show that his debt no longer subsists. It may be a discharged *chitta* or a *khat* which would show that the amount due under that document had been paid off. It may be in the hands of a third person. How without the help of the well-known and well-tried rules of the Civil Procedure Code is that man going to have that document produced before the Board or the appellate authority? No amount of rules, Sir, can take the place of the well-established procedure which a voluminous code like the Civil Procedure Code contains. The Civil Procedure Code is the result of several decades of legal work and the rules contained in it were arrived at after experience. Here you are doing away with all that and placing the debtor and the creditor and whoever will have to go before the Board in a position of great difficulty.

Sir, as regards the Evidence Act, the Boards, as has been pointed out, are not likely to consist of persons well versed in the sifting of evidence. The Evidence Act amongst its many rules contains a provision for rejecting merely hearsay evidence. A villager will not do that, and the persons who are expected to ordinarily constitute the Boards will not be able to reject evidence of that character. A person on his way to a *hat* sits under a tree for a smoke and hears somebody else saying something about a particular transaction, that sort of talk will be given such weight as the rules of evidence would never allow. If you are not going to have proceedings regulated under some sort of civilised procedure, I wonder what these proceedings are going to be. If the Government is going to lay down rules by tearing asunder the Evidence Act and the Civil Procedure Code for purpose of the proceedings under this new measure, they will have to indite a voluminous document. But instead, they need only provide that the proceedings will

be conducted under the well-established rules and practice that have stood the test of time and this would be a much more reasonable procedure. For these reasons, Sir, I support the amendment, and I wonder how otherwise any proceedings can reasonably go on as they are expected to go on in a civilised country.

Mr. H. P. V. TOWNEND: Sir, it is impossible to accept this amendment. The first argument produced against it was that of Mr. Sarat Kumar Roy who says that, when the proceedings before a Board are admittedly judicial proceedings, it is quite illogical and wrong to exclude the Evidence Act and the Civil Procedure Code. He referred to clause 41 which says that all proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code. This section deals with contempt of court roughly speaking and the only result of this clause 41 would be that anyone guilty of similar contempt towards a Board would be liable to prosecution. The clause does not make the proceedings before the Board judicial proceedings for any other purpose whatsoever.

Then, Sir, I come to the objection raised by Mr. J. N. Basu. His remarks first of all show that he has forgotten what is included in clause 16 of the Bill. This clause allows the Board to call for documents, etc.

Babu JATINDRA NATH BASU: May I point out, Sir, that the clause refers to the production of documents by the parties concerned and not——

Mr. H. P. V. TOWNEND: Sir, Mr. Basu is thinking of clause 14. Clause 16 says "subject to rules made under this Act a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure." So clause 16 meets Mr. Basu's point regarding the Civil Procedure Code.

Then, Sir, I come to the Evidence Act. As regards the Evidence Act, Mr. Basu argued that the members of the Boards would be quite incapable of understanding the Evidence Act and therefore the Evidence Act ought to be applied. That is the effect of what he said. As these people will be quite incompetent to understand the Evidence Act, everything they do would be illegal if that Act applied. The whole object of this Bill is to have amicable settlements by village tribunals in much the same manner as under the old *panchayati* system. Under that system it is always easier to get at the truth as the parties speak before their co-villagers. Everyone who has tried a bad livelihood case knows how much more truth does come out in the village than in the Court—although the Evidence Act applies in such cases the atmosphere is not

like that of a Court at headquarters. When the case is heard in the village there is a burst of laughter when anyone lies and in every way it is easier to get at the truth. The same thing has been proved by what has been done in Chandpur. From the reports we find that when the debtor is asked about his witness, he often calls the creditor as his witness, and, as the Hon'ble Member has several times told the House, the creditor has eventually admitted the facts. This has happened again and again and it will happen in the future if the Evidence Act and the Civil Procedure Code do not apply. It was pointed out by various members in the Select Committee that, if this Bill is going to work, these two Acts must be barred and that, Sir, is a conclusive answer to the proposal to apply them.

Babu JATINDRA NATH BASU: Sir, I have looked into clause (16). Mr. Townend refers to this clause which relates only to the production of documents, examination of parties and witnesses; but the Civil Procedure Code contains about 700 sections and deals with several kinds of procedure which ought to be applied in connection with the trial of a claim. This Bill consists of only one or two chapters and says nothing about the procedure.

Babu KHETTER MOHAN RAY: May I enquire, Sir, whether there is any provision under which the Board can call for any document which is in the custody of any Court?

Mr. H. P. V. TOWNEND: It is beyond my capacity to answer that. I imagine that a Board could be a Court for this purpose and could call for documents from a Court.

Babu KHETTER MOHAN RAY: But where is the provision?

Mr. S. M. BOSE: Mr. Townend has made an extraordinary statement that these Boards are Courts.

Mr. H. P. V. TOWNEND: I did not mean that, what I meant was that there was sufficient power given to a Board by clause 16 to call for the documents from Courts.

Mr. S. M. BOSE: These Boards are certainly not Courts. That is as certain as Mr. Townend is sitting before me. Therefore, they have no power to call for production of documents from other Courts except in the narrow sense provided in clause (16). Apart from clause (16)(i) the Board has no power to call for any other document. The Board has no power under the Civil Procedure Code and to say that the Board has power of the Civil Courts is to say something which is really incorrect. The real object is to do away with all law. In this

Bill one of the fundamental principles is to do away with all law; I can quite understand that in a voluntary Board it may be necessary to have a simple procedure; that one does admit, but in case of compulsory Boards where evidence has to be gone into and matters have to be heard under the law, in those contested matters certain rules of evidence or certain rules of procedure are absolutely essential and as we find that the Hon'ble Member has throughout steadfastly refused to guarantee that the Board will be presided over by officers with judicial experience, I have very great doubt as to what procedure will be enforced in these Courts. There will be no procedure except pure random thought, no regular rules of procedure and rules of evidence and that would be the most dangerous thing in these compulsory Boards. I therefore warmly support the amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I wish to say just a few words to explain why Government are opposing this amendment. The whole scheme of the Act is to revive what has always been used in India, the *panchayati* system of settling disputes, and I think it is a fit case where this can be successfully revived. I am sure we had many good things in India, and it is one of the good things which I dare say we want to revive. I do not see any reason for not reviving it simply because this system has not been in use under the Civil Procedure Code during the last 200 or 300 years. As I have said before, if this Bill is to work successfully, it is absolutely necessary that we should have an atmosphere of *panchayati* system in the settlement of disputes and that this clause should be retained.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: I beg to move that in clause 36A (*2*), line 2, for the word "proceeding" the word "proceedings" be substituted.

The two words do not mean exactly the same thing. Throughout the Bill we have been using the word proceedings and there is no reason for any distinction here. Therefore, I propose this drafting amendment

The amendment was put and agreed to.

The question that clause 36A, as amended, stand part of the Bill was put and agreed to.

Clause 37.

Mr. SARAT KUMAR ROY: I beg to move that clause 37 be omitted.

Sir, we have to admit that in all proceedings before the Board both debtors and their creditors must appear and attend from day to day.

However simple the proceedings before the Board are rendered by the rule-making powers, still I am afraid that there will be at least several sittings before each case is disposed of and on every such sitting the creditor has to attend. And, Sir, there may be cases when a creditor and particularly landlord creditors shall have to attend different Boards simultaneously. If these Boards are located at distant places, it would be practically impossible for the creditor or the landlord to attend personally the sittings in all such different places. Moreover, Sir, where the landlords reside in another district, it would be physically impossible for him to attend the sittings of the Board and he will suffer materially unless he is permitted to attend the Board's sittings through agents such as *amlas*, *gomostas*, etc. So I think that the Hon'ble Member in charge of the Bill will clearly perceive that what I am complaining of arises out of practical difficulties apprehended. Then, Sir, from what I have just discussed, I think it is abundantly clear that parties before the Board should have the right to appear through agents, and when the necessity for permitting them to do so appears to be almost an universal one, I fail to understand why it is sought to vest the Board with discretionary powers to allow a party to appear through an agent. There is hardly any justification for it. I therefore think that this clause ought to be deleted.

Mr. H. P. V. TOWNEND: I beg to move that for clause 37 the following be substituted, namely:—

"37. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings."

The material difference between this and the clause as it stands in the Bill is the addition of the words "subject to any rules made under this Act." The intention is that provision should be made by rules for the appearance of legal practitioners in certain cases, and for the appearance of agents in certain cases without the necessity for the special permission of the Board. The reasons for this are not very difficult to see. First of all, in case any one considers that on no account should any legal practitioner be allowed to appear, there is the argument that very many creditors are legal practitioners. It was of course intended from the first that these should appear, but it has been pointed out that this might be most unfair to the debtors who have no knowledge of law. If we have on the one side experienced lawyers who would be able to deal with points of law and on the other side ignorant debtors who would not be able to say anything, the position might be

difficult. So I think it should be made possible to provide that whenever a creditor is a legal practitioner, the debtor might be allowed to be represented by a legal practitioner. That would be fair to both sides.

Then this amendment would allow provision to be made for various points which are mentioned in amendments of which notice has been given, I refer to No. 700 which would extend the list of relations of a creditor given in the proviso, who might appear even if they are legal practitioners, and to amendment No. 704 which suggests that adult relations or agents should be allowed in every case of an orphan, minor, widow or a *pardanashin* lady. There are certain difficulties about accepting an amendment like this latter, but all these things can be suitably dealt with by rules. There is again the point, raised by the last speaker, that it is absolutely necessary for the Boards not to be allowed to harass landlords by demanding their personal attendance. Big landlords of course cannot possibly attend every case before the Boards which, we hope, will be set up. It will be impossible for a *zemindar* who owns property in five or six districts to attend before all the Boards in these districts even if otherwise it was desirable. Of course, it is not desirable that big landlords should be dragged before all these Boards merely because the rents are in arrears. It will be necessary to make a rule that the landlord's agents should be allowed to appear before a Board whenever a landlord is concerned in the matter merely in connection with rents which are in arrears and not in connection with loans which have been granted by him. The difficulty of course is that the definition of landlord is a very wide one and many of the creditors who are to appear before the Boards in order to explain their case are also landlords: many "landlords" are only *raiyats* and they often lend money to their sub-tenants. Therefore, the rule will have to provide that as lenders of money landlords should appear in person usually. Of course, it might be said that all these things should be provided for in the Act; but as a matter of fact the whole thing is very complex and we shall have to proceed here by trial and error as in so many other cases. I hope that in view of this explanation the member who has moved for the omission of this clause will withdraw his amendment. If the clause is omitted altogether, the position is left in obscurity. But all proceedings of the Board are to be regulated by rules made by Government, and it is quite possible that lawyers will hold that the only result of omitting the clause would be to restore the position now suggested by the amendment that Government may make rules to deal with these matters.

Mr. SHANTI SHEKHARESWAR RAY: Sir, I support the amendment moved by Mr. Sarat Kumar Roy. It is something after all that Mr. Townend on behalf of the Government of Bengal should have recognized the absurd position taken up by Government, so far as the

big landlords are concerned if the clause is left as it is in the Bill. As a sop to the feeling of these big landlords Mr. Townend now suggests that it is the intention of Government to make rules for exempting them from appearing before these Boards, but, Sir, it is most unfortunate that the Government of Bengal should desire to keep their good intentions to themselves and should announce these modifications in the course of the discussion on this Bill. If it is the intention of Government to exempt landlords—or at any rate big landlords—it is not yet clear what is the exact position of Government in this matter—whether they are going to exempt only those persons who are in their good graces or whether they are going to make a general rule in the matter. If it is the intention of Government to exempt them, why don't they do it now and have it ratified on the floor of this House? What is the good of keeping it in their own hands? The Government are taking so many powers in their own hands which they want to provide for by their rule-making powers that we find it very difficult now to understand their real intention in bringing forward this measure and for getting it passed by this House. It is only in matters of detail that the rule-making power should be used, but here Government have already made up their minds and come to a certain decision. But when the matter can be easily incorporated in the Bill so that there may be no doubt left or nothing kept open for misgivings or misapprehensions in any quarter, it should not be left to the rule-making power. So I hope that, instead of the amendment which Mr. Townend intends to move or has already moved, he should now make the position clear by exempting the presence of landlords before the Boards. (KHAN BAHADUR MUHAMMAD ABDUL MOMIN: Every landlord?) Well, my friend the Khan Bahadur asks whether all the landlords, big or small, will get the exemption? Sir, if exemption is to be given, it should be granted to all landlords and not only to the big ones. A person may be a small landlord, and it may be inconvenient—he may be an old man, he may be ill, he may be incapacitated—so it may be inconvenient for him to appear before a Board. In that case why should you insist on his presence? Sir, many things are allowed to be done by the agents; so why is it necessary to insist on the presence of a principal in this matter? The whole idea of compelling the presence of the principal before the Board is wrong. If it is intended to do away with lawyers, well that is quite a different matter. So far as the appearance of the principal is concerned, this very thing will make the Bill unworkable because it would be impossible for the landlord to be present at every meeting of the Board just to contest his claim before the Board.

Babu JATINDRA NATH BASU: There is one point, Sir, which, so far as I have been able to follow Mr. Townend, was not made clear by him. So far as landlords are concerned, he has stated that there

will be rules providing that in some cases they need not personally attend meetings of the Board; but there may be persons, other than landlords, mainly in district and subdivisional headquarters, who finance the agriculturists in the course of their agricultural operations and who may find it extremely difficult to attend personally before the village Boards. Under the law as it stands, apart from this particular procedure laid down by this measure there is no compulsion in any civil action on the part of anybody to attend personally unless the personal testimony of that person is required. Plaints for lakhs and lakhs of rupees are signed by constituted attorneys; big companies in England and abroad do their business here through duly constituted attorneys or agents, and it is they that sign claims, and when it becomes necessary to appear in support of a claim it is these agents who appear for their principals. So, also, in the case of the *zemindars*. It is the experience of everyone that in rent suits claims are invariably filed and verified by agents. And at the time of hearing it is the agents or subordinate employees who are personally acquainted with the facts that appear; but here the parties will have to appear unless their appearance is dispensed with by the Board. That, Sir, is an extraordinary element introduced into the procedure under this measure: it would raise laughter everywhere. But Government appears to be blind to this aspect which is apparent even to a child looking at this measure. Sir, why compel a person for a small civil claim to appear personally and to make an application before a Board to be exempted from personal attendance? If the party himself be at the district or subdivisional headquarters he may not have any personal knowledge of the transaction. The books are there and the documents are there—all, with the persons who transacted the business for him, and it is they that would be most competent to help the Board in arriving at a decision. And if the man who personally transacts little of his money-lending business personally, is asked by the Board to appear, he will have to come before it and all that he can say is that he has no personal knowledge of the matters. So how is he to assist the Board? I appreciate what the Hon'ble Member has said about his attempts to introduce the *panchayati* system, but that is in regard to disputes between local persons only. But the question of financing agricultural operations is much wider, and that financing, as he must himself know, is no longer confined merely to village *mahajans*. It has spread far wider. Produce offices and firms in Calcutta send out their agents and big firms who export produce sometimes finance agriculturists. Can it be supposed that Sir Stephen Demetriadi of Ralli Brothers will be brought down from the City of London to appear before one of these village Boards because Messrs. Ralli Brothers have somewhere in the interior of Noakhali or Bakarganj financed some agricultural operations? For that is what this section will involve unless the attendance is excused by the village Board. So why should there be this extraordinary provision? No civil law has

ever contemplated or countenanced such a procedure. I therefore think that something more rational should be introduced.

Babu KHETTER MOHAN RAY: I support the motion of Mr. Sarat Kumar Roy. Mr. Townend has made a distinction between two classes of creditors; that is, landlords and creditors as money-lenders. I can assure Mr. Townend that there are large numbers of money-lenders who do not carry out any of this business themselves. Men like my friend, Rai Bahadur Satyendra Kumar Das, Mr. Ananda Mohan Poddar and my humble self, carry on money-lending business in Tippera and other districts through agents; I am as innocent of this money-lending business as a baby. I myself do not know anything of this. It is the *gomasta* or agents who are responsible for the business carried on in our name. Do Government think that I myself or my friend the Rai Bahadur or Mr. Poddar should appear or make an application before the Board and obtain exemption from them? It is simply placing us and other big merchants at the mercy of the Board. So it would not help them anyway. If a member is dishonestly inclined, he will find it a means for self-aggrandizement. In the Civil Procedure Code, Sir, there is a provision for recognised agents, that persons who are entrusted with the carrying on of a business can appear before a Court and act in the principal's name. And a duly-constituted attorney can sign or verify a plaint because the facts are more within his knowledge. So there is no harm if such people are allowed to appear. Besides, they are not lawyers of whom you are afraid. So why should not recognised agents appear as of right, and not with the permission of the Board? That is my submission, Sir. With these words, Sir, I support the amendment of Mr. Sarat Kumar Roy.

Mr. S. M. BOSE: Sir, law and lawyers are both taboo to the Hon'ble Member. He will have nothing to do with law, lawyers and touts. We have, thanks to small mercies, progressed since the original Bill was introduced. In that Bill lawyers and touts were classed together and were both taboo. But in this Bill certain improvements have been introduced and touts and lawyers are not to be classed together now. But now lawyers and agents may be allowed subject to rules. Sir, I object to this. Questions of principle, must be dealt with in the Act itself and not left to rules; on the questions of details, however, there must be rules. This is a matter of principle whether at the sweet will of the Board a man should be dragged away from a distant place to appear before the Board and not allowed to appear by an agent, and this matter should not be left to rules. I do not trust the rules. I may have some faith in the present Hon'ble Member in charge, but I can have none in his successors.

Mr. Townend said that there would be exceptions and exceptions, and rules will be framed to exempt a big landlord from attendance, etc.

Why go through all this complex procedure? Why not observe the sound well-established principle found in every system of law? A person who has the best cognisance of all facts of the case should appear before the Board as has just been pointed out by my friend, Mr. Khetter Mohan Ray. Big lawyers in towns may lend out certain money; of the details of the transaction they know nothing. Why should such persons have to beg for exemption? That is unthinkable and undesirable, especially, as I am afraid, the Boards will be to a large extent manned by persons who are debtors or have considerable sympathy with them. I say this advisedly because the Hon'ble Member throughout has steadfastly refused to have anything to do with men of judicial experience for these Boards. The only conclusion that I can draw from his steadfast refusal is that the constitution of the Boards will not be such as to command public confidence. For that sound reason, Sir, it is essential that matters of principle should be dealt with here and not left to be dealt with by the rules which might be altered by anybody and everybody and would depend on the sweet will of some persons. This matter should not be left to the mercy of the Boards. Mr. Townend has just said that this provision is an attempt to go back to the old *panchayati* system, which like the ancient feudal system, is as dead as the Dodo. We have made considerable progress from that ideal state of society when life was very simple and there were no complications. Now, Sir, we have gone very far and it is hopeless to make futile attempts to try to bring back the golden past. I strongly support the motion.

Khan Bahadur MUHAMMAD ABDUL MOMIN: The real idea underlying this section as it was first framed and the subsequent amendment were as far as possible to eliminate legal practitioners from the scheme of the Act. There is certainly nothing very unusual or uncommon in not permitting legal practitioners to appear before the Board. As a matter of fact, before the present Union Boards and Union Benches legal practitioners are not allowed to appear and nobody perhaps can say that any injustice is done because of this prohibition. What is wanted by these Boards is to ascertain the real facts of the case and not so much law; and facts perhaps can be much better understood if legal practitioners are not allowed to dabble in them. That is one side of the picture. On the other hand, I do not see the justice of not permitting agents who are not legal practitioners appearing for the parties. If agents are forbidden, it will not only be hard on the *mahajans* and landlords, but in many cases it will be hard on the debtors themselves. For instance, in North Bengal the ordinary simple debtors borrow money or simple villagers lend out money and they do all these transactions through what is known as the *diwani*. These people know nothing at all, *i.e.*, how much they lend or how much they get. If any Rangpur cultivator is asked any question, he will say:

"Refer it to the *diwani*." If the *diwani* is altogether forbidden to represent these people, it will be very difficult for the poor illiterate debtor to represent his case. In a case like this we cannot make a hard-and-fast rule forbidding agents or even restricting that in every case the permission of the Board will have to be taken before an agent appears. I think that so far as agents are concerned, there should be no prohibition at all in this section. So far as legal practitioners are concerned, it should be provided that ordinarily legal practitioners should not be allowed, but it is quite possible that a landlord may have an agent who is a lawyer and who does all his ordinary business. Nowadays many *naibs* are B.Ls. Are they to be forbidden, not because the *naib* himself lent the money and his younger brother has taken the money from the *sadar kutchery* at headquarters. So I think in a matter like this we should not be very hard on either party so long as ordinary legal practitioners are not allowed to practise before these Boards as they practise in ordinary Law Courts. If the Act is amended or the rules are made perfectly clear, I do not suppose that anybody will have any complaint.

Rai Bahadur SATYA KINKAR SAHANA: I rise to oppose the motion of my friend Mr. Sarat Kumar Roy and my reasons are simply this: We are almost at a hailing distance from the end of the Bill. I hope I can presume to have some knowledge of law. If I have got an insight in law; I think, it is meant to banish all law from the precincts of this Bill, as lawyers and legal practitioners have all been banished from its precincts. Why should agents be allowed? They have got a very bad odium. They are generally called law agents of landlords; at least they smack of legality in them and therefore they should be banished. Some of my friends have taken exception to Mr. Townend's secrecy about the rules, but I greatly applaud it because all ancient sages who dabbled in *rajniti* have advised *mantragupti*, *i.e.*, secrecy about what is to be done afterwards and Government have followed that principle here. I think, Sir, that if the Bill is to be enforced in the land or made to work smoothly, there should be no justice introduced in it because, as we have just heard from Khan Bahadur Abdul Momin, we are going back perhaps to the old days—most probably we are going closer to the Eden of Adam and Eve when Adam delved and Eve spun and when there were no lawyers. Therefore, I think the attempt of my friend Mr. Sarat Kumar Roy to introduce law and justice into these Boards is not a very reasonable one because these are arbitrary Arbitration Boards and if law and justice be introduced into them, their arbitrariness will be taken out. Therefore, Sir, I oppse the motion.

Mr. P. BANERJI: Sir, I rise to support the motion. Rai Bahadur Satya Kinkar Sahana said that he was against this motion, but I think he was absolutely sarcastic because he failed to see the

necessity of such a clause as this. This clause has been criticised as a most mischievous one, and I have said that there are other clauses of a similar nature. In opposing this motion Mr. Townend made a vain attempt to defend his clause and he admitted in fact that he could not defend this inequitous clause. He said that it no doubt was a complex matter, but this complexity was not explained by him and he has always told us that by the rule-making powers of Government this complexity would be removed. Although some questions were put to him, he could not explain the situation properly. Mr. Porter in his maiden speech defended the co-operative societies and appealed to this side to consider the case of widows and minors who lent their money and asked us to consider the case of these people. May I ask that the appeal of Mr. Porter be extended to Mr. Townend so that he may change his mind even at this time? These poor widows and minors cannot certainly appear before the Board, and it has not been provided for that they will be allowed to be represented by agents. Then what will be their position? The whole object of the Bill is to harass the creditors. Only one solution has been made out as the Hon'ble Member has suggested that no *zemindars* will at least be hit on any account. What about the creditors and also people like Babu Khetter Mohan Ray and Mr. Ananda Mohan Poddar? The clause is so mischievous that it had no support even from Khan Bahadur Abdul Momin. He understood that as nobody will be allowed to be represented by an agent, it was a preposterous proposal. Therefore, he advised the Government even at the eleventh hour so that Government might reconsider the matter. Whatever remarks I have submitted from time to time I find that Government have at last begun to realise that this is a mischievous provision. I fail to understand from a common-sense point of view why lawyers should not be allowed in this particular case. When it says that the son-in-law and the brother could not be allowed to represent the party, there are very good reasons for it. May I know what are the valid reasons that Mr. Townend has. But I can say at once that there is no reason whatsoever. If a husband is allowed, why could not a son-in-law or brother be allowed? Supposing, in some cases, there are widows, certainly their sons-in-law ought to be able to represent them. Unless there is reason to the contrary, I think this should be passed by the House. There is no sense in the argument that has been put forward by Mr. Townend. He could not defend himself in any circumstances. As Khan Bahadur was suggesting, there is no provision for the lawyers in the Union Courts; what is the necessity of making a provision for lawyers to appear before these Boards which are not Courts? I feel personally that the lawyers sometimes keep the litigants in their proper humour or otherwise they get very upset because they are so sentimental. I referred to an instance at Kishoreganj in Mymensingh district which Babu Satish Chandra Ray

Chowdhury cited the other day. Only day before yesterday a Union President was murdered in the Munshiganj subdivision, an old man of 70 years. He was murdered when returning from the Court because one of the parties was aggrieved in a case. The object of Government in compelling people to go to Union Benches in remote villages I fail to understand when there are murders like this. The direct object of Government in passing this measure is to humiliate the creditors and nothing else. I think it is time that the Hon'ble Member should come forward with amendments so that this anomaly may be rectified and members of the House may be satisfied.

Maulvi ABUL KASEM: I rise to oppose this amendment lock, stock and barrel. I have heard and heard with attention and care the eloquence of Mr. P. Banerji, but I regret to say that my dense brain will not be convinced of accepting it. I oppose it primarily on the ground that this is a legislative measure intended to relieve the poor debtors, particularly the agricultural debtors, from their debts and if steps are not taken to prevent lawyers appearing on their behalf or on the other side, the result will be that whatever relief they may receive from these Boards from their debts will be enlarged and enhanced. I have got some real experience in the matter. Generally, people who go to Law Courts with a galaxy of brilliant lawyers on each side return from there, whether they win the case or lose it, if not as actual debtors but much poorer. My friend Mr. P. Banerji was very eloquent when he said that the President of a Union Board in the Munshiganj subdivision was murdered and why? Because no lawyers were there in his Court. If some lawyers have argued all that the aggrieved party had to say and the Court gave a judgment against him, then the President would certainly not have been murdered. His idea is that as long as the Union Courts worked without the help of these lawyers these murders will increase in the country. I think my friend knows that many judicial officers, both on the executive side as well as on the civil side, have been murdered and murdered when they had to hear cases with the full sense of their responsibility. My object in retaining the clause as it is is to prevent the poor agriculturists from getting into more debts and you ought to realise that we ought not to burden them with other debts much larger than their present debts. There is one other thing. It is very hard on the parties to compel them to appear in person. There are men who by their age or position in society or on account of wealth will find it very inconvenient and sometimes their business will also not permit them to appear in Court. Therein the provision is that with the permission of the Board an agent can appear. I think it is reasonable to support that these Conciliation Boards will be so unreasonable as to refuse permission to an agent in such cases where there is hardship. You, yourself and your countrymen are forming these Boards and you ought to trust these

Boards to exercise a little discretion in permitting agents to appear or not. If you give a statutory right to an agent to appear, the result will be that lawyers will be empowered to appear as agents. Everyone in this House and in this country knows that there was a great case for arbitration which was to be fought between two highly placed persons in India, but they were not allowed under the orders of the Governor-General to engage lawyers. What was the result? Both sides engaged eminent lawyers whom they called their own servants (and they were technically their servants) and when the Viceroy found that both sides were represented by highly qualified lawyers or even lawyers who were indented from England, he rescinded that order. Both parties were quite free to bring in as many lawyers as they liked, and the lawyers had a very good time of it. The result was that one of them is rotting in the Madras Presidency on a few hundred rupees pension while the other is actually going to abdicate his legal status. I am not much concerned about them, but I say that to give a statutory status to anyone will end in serious litigation, and it will be an impossible business. I, therefore, oppose the amendment and support the clause as it stands.

Maulvi ABUL QUASEM: I wish to say just a few words. My sympathy is with the mover of the amendment, but being anxious to see that the Bill is really passed in a form that will meet the purpose for which it was framed, I must oppose the amendment. The House has already accepted clause 36A; thereby the House has already endorsed the principle that in these cases before the Boards, legal technicalities should be kept aside. Now the House is asked to omit the clause which provides that no legal practitioner as such should be allowed to appear before a Board to represent any party. I think this clause, as it is, is in keeping with the said previous clause. When the House has endorsed that clause, it cannot endorse the proposal that the amendment puts forward. The legal practitioners, as a rule, do indulge in legal technicalities and if they are allowed to appear before the Boards there is likelihood of delay and difficulty in the disposal of these cases. The idea is that these Boards should deal expeditiously and from a common-sense point of view with the business that may come before them. I find that exception has been taken to the provision that no party should without the permission of the Board be allowed to be represented by an agent. I think there is very good reason for it. The whole idea is that there should be voluntary settlement of debts and that both the parties should agree to a fair and reasonable sum. The creditor will in most cases be called upon to agree to a reduction, but his agent may not have the authority to agree to a reduction: it is necessary for a creditor to be present in person to agree to a proposed reduction. That is the principal reason. As the agent may not have plenary power to agree to a reduction, it is necessary

that the principal should be there so that the whole case may be disposed of without much loss of time. If an agent were to come before the Board without having any right to agree to a reduction that will be protracting the proceedings unduly. There is a very substantial reason for putting in this provision. The principal purpose of the Bill is that the settlements must be made amicably and expeditiously. The difficulty to which Babu Khetter Mohan Ray refers is, however, a real one. As Government will see that this difficulty is obviated by means of rules, I do hope that members of this House will be content with the assurance from Government. I find Mr. S. M. Bose is not pleased at the rule-making power of Government. It may be a good thing or bad thing, but the rule-making power has got to be given to provide for a multitude of details and they have got to bear that in mind. If a particular rule framed under this rule-making power is defective, it may be remedied without having recourse to the protracted method that is to be gone through to frame a particular piece of legislation. The provision is intended to remedy any mischief that may be found without delay under the rule-making power. There is a certain amount of flexibility in the rule-making power, and I do hope that those members who have opposed the retention of this clause will realise that there is strong ground for the retention of the clause as it stands, and will not press their motion.

Babu KISHORI MOHAN CHAUDHURI: I am sorry I cannot agree with my friend Maulvi Abul Quasem that the clause should be retained. We are enacting a lawless law, so we ought to be very careful to see that no injustice is done by the uneducated village people. The report of the proceedings before the Union Boards is not very favourable to them and shows that in many cases injustice is being done. Therefore, we have insisted that at least these Boards should be presided over by lawyers of mature understanding, but that has not been accepted. I fully agree with Khan Bahadur Abdul Momin that agents should be allowed in all cases, but lawyers in some cases. Of course, it is not very unreasonable and Government should not fight shy of law. If they are afraid of lawyers, they may chose the Law Colleges. That will diminish the activities of the lawyers who, when they do not find much employment in Civil Courts, may get employed as *naibs* and *tahsildars* under these *zemindars* and make a decent living. But to say that no legal help will at all be allowed would be very unjust. It is well known that in rent suits, Small Cause Court suits, etc., legal practitioners and lawyers are employed by the defendants, in many causes no appearance is entered and about 50 per cent. of cases are decided *ex parte*. And even the poor debtors or litigants do not engage a pleader though the plaintiff's side may be represented by good lawyers. It is only in cases where legal or special help is thought

necessary that some will be employed for this purpose. If lawyers go out, a grave injustice will be done. It may be necessary to take the help of a pleader who may go like a Criminal Investigation Department man without any special dress or without disclosing that he is a pleader, he will go and simply help the litigants. So when it is absolutely necessary that some legal help must be given, it should be utilised. So I say it is not at all proper on the part of Government to require that no legal help should be obtained, as if, Sir, as soon as the lawyer makes his appearance, the whole thing will be frustrated. So as Mr. Momin has suggested very reasonably, agents in all cases should be allowed. Muhammadan *purdahnashin* ladies will not be able to appear: they may have no husbands or sons with legal knowledge. Then what are they to do? In the case of minor plaintiffs again, I think, some agent or person on their behalf must appear. So it is very unjust to say that lawyers should not go there as if a lawyer's presence will mar the beauty of the whole thing. Therefore, I submit that Mr. Momin's suggestion should be accepted and in all cases where legal or whatever help may be thought necessary should be allowed.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I appreciate the opposition of the members to the amendment moved on behalf of Government and also to the opposition to prevent lawyers from appearing before a Board. Sir, what I would like the House to realize is that we are trying to meet an abnormal and extraordinary situation by special laws, and naturally our old ideas of legal procedure have got to be modified. You have got to judge these provisions from the scheme of the Act and what is contemplated therein, and not according to the preconceived ideas about justice and legal procedure.

First of all, Sir, I will deal with some of the objections regarding allowing the landlord to appear by agents. Sir, Government do not intend to make any differentiation between big and small landlords. What is really intended is that, as it is very difficult to provide for these things specifically in the Act, we have kept it within our rule-making powers to provide that people who have got to appear before the Boards for a claim for arrears of rent—they only will be allowed to appear through agents; that is to say, where the claim is for arrears of rent, those people only should be allowed to appear through agents. Then the question arises: Why make a differentiation between money-lenders and landlords? This is, Sir, a most pertinent point. First of all, one of the obvious reasons, as Mr. Quasem has said, is that in the case of the money-lender he has got to reduce his claim, and therefore we would like the principal to be present, otherwise an agent may not have the authority to reduce it to a particular sum and the case may be deferred and postponed. But a point on which I lay greater importance is the question of the necessity of the presence of the money-lender

before the Board. When we are dealing with cases where people sign on blank *hoondis*—blank papers—and where we are going to open up transactions which have been effected during the last five or ten years, it is absolutely essential that persons who have advanced the money ought to be present. (BABU JATINDRA NATH BASU: They may have no personal knowledge.) (Here were interruptions which were inaudible.) If hon'ble members will only listen to me, they would find out whether what I am saying is correct or not. I say advisedly that the persons who have advanced the money should be present because they should be confronted with persons who have taken the money, and that is the only way by which we can arrive at the truth. Once you allow a creditor's agent to represent him before the tribunal—a man who has not actually lent the money or any servant of his in that case he will produce his documents before the Board—as Mr. J. N. Basu has told us the bond is there, the documents are there, the account-books are there——

Babu JATINDRA NATH BASU: Suppose the man is in England?

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I am surprised that a person like my friend, Mr. Jatindra Nath Basu, should interrupt me in this fashion. In hard cases there is a provision under our rule-making power that we can give exemption. This law is not like the laws of the Medes and the Persians that it cannot be altered. There are two cases, Sir, in which this exemption has been provided for, and that will be done under our rule-making power. You can allow the people to appear by agents; the Board also can grant exemption. If the Board does not give permission in such cases, the appellate officer is there who may not be as unreasonable as the Board. Therefore, it is useless to raise this sort of objection by citing the peculiar case of a person who may be in England.

Let me now come back to my point. It is that if an agent comes before the Board with his account-book and he is confronted by the man who says: "Well, the amount stated in the document is not correct; I have taken much less." What will happen? So, the agent may not be in a position to prove the accuracy of the amount. If on the other hand, you get the village money-lender and the debtor face to face with each other, it is very difficult for the latter to deny a particular amount. When they are thus actually face to face, the debtor cannot deliberately say "No," and no man with a knowledge of village affairs will deny this.

Babu JATINDRA NATH BASU: May I rise on a point of personal explanation, Sir?

Mr. PRESIDENT: Order, order. I think the Hon'ble Member should be allowed to develop his points according to the light in him

without any interruption. If you have any remarks to offer by way of refuting any of the arguments of the Hon'ble Member, you will have ample opportunity for doing so later on.

Babu JATINDRA NATH BASU: I do not want to refute his arguments.

Mr. PRESIDENT: At any rate, you cannot rise unless the Hon'ble Member yields to you.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I want to make it clear that the idea is that the debtor and the creditor should face each other. When I say "creditor" I want to make the reservation made by Babu Khetter Mohan Ray, viz., that in cases where big *mahajans* have lent money through agents, in that case the Boards would allow the agents to appear. They will certainly not drag in my friend Khetter Babu or men like him who may not know the facts about the transaction, although as a business-man he should actually know the exact amount that he has advanced. But if the creditor can be present, it will be much more convenient to the Board as he will be able to tell the Board the correct state of affairs. Obviously, he should be in a position to know the facts, and it is the most obvious thing for the Board to call him in order that he may confront the debtor. In this procedure, Sir, we are reverting to the simple old system which we inherited. Mr. S. M. Bose with his education in Cambridge and Calcutta has perhaps forgotten the custom of his own country. (MR. S. M. BOSE: So have you.) But people who live in the villages still believe in their old traditions and understand these things much better than Mr. Bose does. Sir, the point is that the whole scheme of the Act is to give up for the time being the traditions of the Law Court and go back to the simple *panchayeti* system of bringing the creditor and the debtor together face to face and trying to get at the truth, *i.e.*, what the facts are, and not by the recognized methods of the Civil Court. It is an experiment, and no one can be certain that it will succeed; but it has been successful in other places, and there is no reason why it should not succeed here in Bengal. That is the only way in which it can be done. Once you have lawyers and agents, I am afraid that you will not be able to give relief to the debtors which you want to give; you will not be able to confer on them the benefit which you want to do by this Bill.

Sir, apart from the point raised by Maulvi Abul Quasem, viz., that whatever reduction of a debtor is made will be more than eaten up by the fees of pleaders: That is a point which I do not enlarge upon, as it is merely a side issue.

Now, Sir, I may just allude to the remarks made by Mr. S. M. Bose for having adopted the old *panchayeti* system and say that the present

tendency is to revert again to the *panchayeti* system, and the Village Self-Government Act is an indication of that tendency. Perhaps, Mr. S. M. Bose in his eloquence forgot for the time being of the existence of this Act where again lawyers have been excluded. Now, Sir, as regards the point raised by Khan Bahadur Abdul Momin, that again is a justification why power should be reserved by Government for making rules in extraordinary cases. If in a particular place all the facts are known to a set of people and if the Board finds that without the presence of the principal, it is not possible to get at the facts, it should be possible by making rules to allow the people in that particular place to appear. But if you make a rule allowing agents to appear, you have the risk of touts appearing on their behalf and that is a thing which we do not want. Here what we are providing for is the presence of only those people who have transacted the business and it is necessary that they should come and say what the facts are. Therefore, I would ask the members of this House to give this scheme a trial. There is no certainty that it would be a success, but after all the possibility of harm is very remote. Even in those sections where we have taken special powers, even there the actual harm that can come to a creditor is very little. We have provided that only in very rare cases the principal can be reduced; we have provided for appeal against the orders of the Boards, and we hope that we shall be able to get better results by this method than those suggested by members of the opposition. Therefore, I oppose the amendment of Mr. Sarat Kumar Roy and support the amendment of Mr. Townend.

Babu JATINDRA NATH BASU: Sir, I understood the Hon'ble Member to say that so far as pure money-lenders are concerned they would have to appear before the Boards. But what I desire to say is that there are many cases in which, as modern conditions go, it is not the village *mahajans* but merchants in the district headquarters or somewhere else who advanced this money, and it will be difficult for them to appear before these Boards.

Mr. PRESIDENT: Order, order, that is not a personal explanation.

(The Council was then adjourned for fifteen minutes.)

(After adjournment.)

The question that clause 37 be omitted being put, a division was taken with the following result:—

AYES.

Dal, Rai Bahadur Sarat Chandra.
Banerji, Mr. P.
Bose, Mr. S. M.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Khetori Mohan.
Khan, Mr. R.
Mitra, Babu Sarat Chandra.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray, Mr. Shanti Shekhareswar.
Sen, Babu Nesmal.
Roy, Mr. Satkeswar Singh.
Roy, Mr. Sarat Kumar.
Roy Chaudhuri, Babu Hem Chandra.
Sen Gupta, Dr. Naresh Chandra.
Singh, Sirjut Taj Bahadur.
Singha, Babu Kshetra Nath.

NOES.

Afzal, Nawabzada Khwaja Muhammad, Khan Bahadur.
Banerji, Rai Bahadur Kedar Chandra.
Bazir Uddin, Khan Sahib Maulvi Mohammed.
Bose, Mr. S.
Chakrabarty, Babu Nihar Chandra.
Chanda, Mr. Apurva Kumar.
Das, Babu Gurupreasad.
Gilchrist, Mr. R. N.
Graham, Mr. H.
Haldar, Mr. G. K.
Hooper, Mr. G. G.
Hossain, Maulvi Mohammed.
Kasem, Maulvi Abul.
Khan, Khan Bahadur Maulvi Muazzam Ali.
Khan, Maulvi Abi Abdulla.
Martin, Mr. O. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Momin, Khan Bahadur Muhammad Abdul.
Nandy, Maharaja Sris Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Quasem, Maulvi Abul.
Rahoom, Mr. A.
Rahman, Khan Bahadur A. F. M. Abdur-.
Ray, Babu Amulyadhan.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. Y.
Roy, the Hon'ble Sir Bijoy Prasad Singh.
Sachse, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Shah, Maulvi Abdul Hamid.
Stevens, Mr. H. S. E.
Thompson, Mr. W. H.
Townend, Mr. H. P. V.

The Ayes being 17 and the Noes 35, the motion was lost.

The motion of Mr. H. P. V. Townend that for clause 37 the following be substituted namely:—

"37. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings."

was put and agreed to.

Mr. S. M. BOSE: Sir, I beg to move that in clause 37, line 1, after the words "a Board under this Act," the words "other than a Board empowered under section 7" be inserted.

Sir, the object of my moving this amendment is that the clause, as it stands, may be defended so far as ordinary Boards are concerned, but in the case of Boards which have got powers under clause 7, to enforce settlements, I think the help of lawyers and other agents will be required, and this should not be left to the discretion of the Board.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I regret I have to oppose it because under the scheme of this Act we should do away with lawyers when we are dealing with cases coming before the Board, but I may point out to the House that lawyers will be allowed to appear before appellate officers.

In view of what I have stated, Sir, I hope Mr. S. M. Bose will withdraw his amendment.

The amendment was put and lost.

The question that clause 37, as amended, stand part of the Bill, was put and agreed to.

Clause 38.

Babu KISHORI MOHAN CHAUDHURI: I beg to move that clause 38 be omitted.

Sir, this is to my mind an unnecessary provision. I cannot understand why registration should be made compulsory. The decision of the Board will be given in the form of a decree and there is a provision that the certificate officer will execute it as a decree, and do the needful to give effect to the award. The poor litigants and parties will be harassed if they be required to have the award registered. This is a matter which can be avoided.

With these few words I commend my motion to the acceptance of the House.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I am afraid that this clause is necessary in view of the fact that there must be some records accessible to the creditors or would-be creditors, that is those who are going to lend money, in order to enable them to check whether the property in the particular case is the subject of an award. Therefore, it is easier for them to go to the Registry Office and to have one search made both for encumbrances as well as the award rather than registering the award in the office of the Board which will mean that he will have to make one search in the Registry Office and then another search in the Board's Office and both these can be done in the Registry Office. That is the advantage to have the award registered as provided for in the Act.

The amendment was then put and lost.

The question that clause 38 stand part of the Bill was put and agreed to.

Clauses 39, 40 and 41.

The question that clauses 39, 40 and 41 stand part of the Bill was put and agreed to.

Clause 42.

Mr. P. BANERJI: I beg to move that clause 42 be omitted.

Sir, I fail to understand why there should be an indemnity clause here. Hitherto Government have put in indemnity clauses in all criminal laws. We know that it was done for the purpose of enabling officers of Government to put down some movement in the name of Law and Order and they have recourse to certain actions which are not legal. Naturally the executive Government made a search for a provision by which the officers of Government could be protected. That, Sir, was a different matter and this was done practically when the country was at war with the Government. Therefore, Government thought that there was nothing unfair in war and so Government brought in several measures in which the indemnity clause was put in to protect their officers for their acts. Now, Sir, I fail to see why in such a civil matter as this such protection is needed. It appears from

this as well as from the way the Boards will be constituted, the orders that will be passed by them will cause not only hardship but damage to many. These Boards will be constituted of persons, as the Hon'ble Member says, who will entirely depend on a common-sense view of things. He has further said that he is trying to bring in the old *panchayeti* system in the countryside. If there is no check on the action of the members of the Boards owing to the existence of this clause, they will be incited to do whatever they like. Therefore, I consider that such a clause should not exist, and I accordingly move for its deletion.

Dr. NARESH CHANDRA SEN GUPTA: Sir, I support the motion of Mr. Banerji but on very different grounds. In the first place, I think that this clause is altogether superfluous because the law already protects persons who will be acting under this law *bonâ fide*, and perhaps the protection goes even further than that. The persons who will be doing the work that will be entrusted to the Boards, viz., the Chairmen and members under this Act, will all be engaged in a judicial proceeding. The terms of the Judicial Officers Protection Act are very, very wide and protect every person of this character. The Chairman and the members of the Board and the appellate officer will all be protected by the Judicial Officers Protection Act which is far more comprehensive than this clause. Apart from the Judicial Officers Protection Act, it is a well-established law that when a person does any act under any statutory powers *bonâ fide*, no action can lie against him. There is a long string of judicial decisions which have established that principle. Therefore, for that purpose this clause is wholly unnecessary. But if the Government think that the protection given by these clauses does not apply and that there should be special protection given under this law, then I think the clause should entirely be redrafted. Protection is said to be given under this clause to acts done by the Chairman and other members of the Board when such acts are done only in good faith. The definition of good faith given in the General Clauses Act is not the same as that given in the Indian Penal Code. Under the Penal Code nothing which is done without due care and caution can be said to be done in good faith; but that portion of the definition is wanting in the General Clauses Act. A man may act with culpable negligence, but so long as he acts in good faith he is to be protected. I can understand if the protection comes under the Judicial Officers Protection Act; but if it does not, then I think it is a dangerous policy to give them protection when they act in a negligent manner without due care or caution merely because they have acted honestly. In this connection, may I, Sir, draw the attention of the Government Members to the proposed Court of Wards Amendment Bill, as it came out of the Select Committee. There was a similar clause in that Bill, viz., clause 55A, and that clause provided as originally drafted that no

decree or order shall be made by the Civil Court against any person for anything in faith done or intended to be done under the Act. The Select Committee of that Bill considered the matter and found the definition of "good faith" in the General Clauses Act and they amended very properly the clause in this way, viz., no decree or order shall be made against any person for anything done honestly and with due diligence. Under this Act, if you think that the Judicial Officers Protection Act does not apply here or that the general protection given to persons exercising statutory powers in good faith does not apply but that a special protection is needed, then, I think, it is quite proper and necessary that that protection should be limited only to acts done honestly and with due care and diligence.

Mr. H. P. V. TOWNEND: Sir, Mr. Banerji has argued that this clause is bound to be pernicious, because it is modelled on provisions to be found only in enactments which give Government officers power to deal with criminal matters and which are inserted in those enactments only in order to enable them to act illegally with confidence. If I can show, Sir, that similar clauses occur in Acts where no such suspicion can possibly arise, his argument, in my opinion, will be shown to be completely fantastic. I would enquire of him whether he thinks that the insertion of a clause like this in the Ancient Monuments Preservation Act was intended to enable executive officers to behave illegally. I would also enquire of him whether he views with deep suspicion the existence of a similar clause in the Indian Post Office Act. It seems to me that he sees evil where no evil is. In everything Government does he seems to think there is some ulterior motive and that a very suspicious one.

Dr. Sen Gupta has argued in favour of omission of this clause on the ground that the object of it is provided for elsewhere and that if it is provided here it ought to appear in a different form. But he has proposed no amendment or alteration. The latter part of his speech was, I think, quite beside the mark. In a matter like this Government can only proceed according to the advice of its advisers and they have advised that there should be such a clause as this in the Bill. They consider that it is necessary to put this in the Bill if the members of the Boards are to be protected. What is the position if they are not protected? If they are not protected, they will not be able to proceed with confidence, and they will be unable to proceed at all. If they know that they are protected, when they act in good faith, it will be sufficient.

Sir, as regards the animadversion passed on the drafting, I may say that the clause has been copied *verbatim* from the Rural Development Act, because it was thought that wording taken from an Act passed so recently would probably meet with the approval of the House: I am sorry that this expectation has not been fulfilled.

The amendment was then put and lost.

The question that clauses 42, 43 and 44 stand part of the Bill was put and agreed to.

Clause 45.

Mr. P. BANERJI: I beg to move that clause 45 be omitted.

In this clause you will notice that the penalty is very high still, though it has been reduced by the Select Committee from 7 to 3 years. I consider such a penalty for an offence of this nature to be too much. What happens in a case like this in a Court of Law? In 99 cases out of 100 when the creditors go to Court and file suits for realisation of their dues the debtors come forward and say though the pro-note was given no transaction took place and no money was received. May I enquire from the Hon'ble Member what is done by the Judicial officers in those cases? I think the decree is given in almost all cases, but in this case where the Board will be appointed in the country side, it will consist of favourites of Government and it will form some sort of opinion and pass some sort of judgment against their political opponents. So this will be a machinery to oppress some people. I therefore ask the Hon'ble Member to take steps that these Boards may not be converted into machinery for oppressing people and for keeping alive a perpetual feud as has been done by the Union Board. Government here indirectly is forming a machinery to check the legitimate aspirations of the people and their struggle for freedom. That is the ulterior motive of Government and, therefore, I say that such a fine should not have been provided for. With these words I move my amendment.

Dr. NARESH CHANDRA SEN GUPTA: I oppose this motion. I understood Mr. Banerji to say that for the offence of forgery and perjury the punishment of 3 years would be too severe and the provision of such a punishment upon conviction by a Magistrate will prevent the legitimate activities of the people in the countryside in the occupation of forgerers and perjurers.

Mr. P. BANERJI: For such offences formerly there was capital punishment.

The Hon'ble Khwaja Sir NAZIMUDDIN: I do not think I need add anything more after what Dr. Sen Gupta has said. I oppose the amendment.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: I beg to move that in clause 45 (*1*) (*a*), line 3, the words "or affirmation" be omitted.

This is purely a drafting amendment. The words are unnecessary. The clause referred to statements "whether on oath or not." An

affirmation is not "on oath." So it is covered by the words "or not." The inclusion of all the three things rather makes the clause ambiguous.

The amendment was put and agreed to.

The question that clause 45, as amended, stand part of the Bill was put and agreed to.

Mr. PRESIDENT: Amendment No. 718 which proposes total omission of clause 46 is out of order because the rule-making power has already been given.

Maulvi ABDUL HAKIM: I beg to move that clause 46 (2) (*a*) be omitted.

The primary intention of my moving this amendment is that all sorts of agricultural debts should come under the purview of this Act. If there is such a provision as is found in this clause, then it may create a bar against the taking up by the Boards of all agricultural debts under this Act. From the report of the Economic Enquiry Committee we find that there are 50 lakhs of agricultural families in Bengal who are indebted and from the report of the Banking Enquiry Committee we find that the total amount of agricultural debts is 100 crores of rupees. If we calculate mathematically we find that the average debt of an agriculturist in Bengal amounts to Rs. 200. I can assure this House as well as the Government that there are few agriculturists in Bengal whose debts amount to 10 or 15 or 20 thousand rupees. In the circumstances I think that this clause should be omitted and all sorts of agricultural debts whether big or small should come within the purview of this Act and there should be no bar to deal with any of their cases under this Act.

The Hon'ble Khwaja Sir NAZIMUDDIN: I beg to oppose this amendment as this does not say that Government will prescribe, but if it is found necessary they will prescribe. I can give an assurance to Maulvi Abdul Hakim that as far as the genuine agriculturists and their debts are concerned, there is no likelihood of their being kept out merely because of the maximum limit. The definition of agriculturist is very wide, and if it is found that outsiders are coming in and their debt amounts to a large sum of money, in that case the Government will prescribe a maximum limit. In any case it does not say that the maximum limit must be prescribed.

The amendment was put and lost.

Mr. H. P. V. TOWNEND: I beg to move that after clause 46 (2) (*r*), the following be inserted, namely:—

"(*rr*) the order of payment of the amount referred to in clause (*c*) of sub-section (*1*) of section 23."

This is a consequential amendment. The clause was inserted in section 23 providing for rule-making powers.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 46 (*2*) (*s*), after the words "application under," the words, brackets and letters "sub-section (*3*) of section 13 and" be inserted.

This is consequential to the addition made by the Select Committee in section 13 (*3*).

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 46 (*2*) (*zl*), after the words "by a Board," the words "or an appellate officer" be added.

This is a consequential amendment.

The amendment was put and agreed to.

Mr. H. P. V. TOWNEND: I beg to move that in clause 46 (*2*) after the sub-clause (*ww*) the following be inserted, namely:—

"(*wx*) the transfer and disposal of applications under section 33A."

This is a consequential amendment and has reference to the rule-making power. There was a similar clause in the Bill originally, namely, clause (*f*). When sub-clause 8 was omitted and clause 33A was inserted, this clause (*f*) was omitted. There should be a reference in clause 46(*2*) to clause 33A: there should have been a consequential amendment here.

The amendment was put and agreed to.

Mr. H. P. V. Townend to move that after clause 46(*2*)(*z*[1]) the following be inserted, namely:—

("*zl*a) the representation of a party in proceedings before a Board."

The amendment was put and agreed to.

The question that clause 46, as amended, stand part of the Bill was put and agreed to.

Clause 47.

Mr. P. BANERJI: Sir, I beg to move that clause 47 be omitted. My submission is that though we apparently find that the fine will not exceed Rs. 50, yet when we read the latter part of this clause we find that if the breach is a continuing one there is provision for a further fine being imposed which may extend to Rs. 10 for every day after the first during which the breach continued. Sir, this certainly the Hon'ble Member will admit is too much and that the punishment proposed is rather severe. Therefore I think that this clause should be omitted; if that is not possible, it should at least be modified. It is too much

for any member of the Board. I do not know who they will be, what allowance would be granted to them. These are secrets and I suppose they are known to Mr. Townend and should be disclosed before the House. With these few words I move my amendment.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I rise to oppose this amendment. It is very necessary that this punishment should be provided in the Act, and I think that it is very reasonable and fair.

The amendment was put and lost.

The question that clause 47 stand part of the Bill was put and agreed to.

Mr. H. P. V. TOWNEND: Sir, I beg to move that clause 2 (*15*) be omitted.

This is merely a consequential amendment and with your permission, Sir, I move it, in order to bring the clause into line with clause 19. It may be in the recollection of the House that when moving the *Explanation* to clause 19 I explained that this would involve an alteration to clause (*2*) as a consequential amendment and this is the consequential amendment.

The amendment was put and agreed to.

Dr. NARESH CHANDRA SEN GUPTA: May I in this connection, Sir, draw attention to another matter in which a consequential amendment is called for? With regard to the definition of debt in clause 2 (*8*), it does not include any rent not due at the time when a Board determines the amount of debts under section 18. Now, Sir, in clause 9 (*7*) it is provided that a Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor after the date of application under sub-section (*1*) or sub-section (*3*). There is another fresh change. So this definition of debt should be altered to suit the requirements of other clauses in this Bill. For instance, if debt does not include any rent due at a time after the application was made, what will happen? In any case, there may be cases, as I have pointed out when the amount of a debt may not be determined at all, and there may be also cases where there was no dispute with regard to the debt. In that case there will be no determination of debt under section 18, so that this definition will be meaningless. At least it should be "or" something which has been put in another clause.

Mr. H. P. V. TOWNEND: Sir, I think I should explain to the House that after the discussion on clause 2, when Dr. Naresh Chandra Sen Gupta pointed out this difficulty, I approached the Hon'ble President after clause 2 was finally passed with a suggestion that we might

alter it by a consequential amendment at this stage of the discussion; but the Hon'ble President's decision was that it could not be done. The matter had been discussed and decided already, and we could not therefore bring forward a consequential amendment. The Hon'ble President added that it would be a dangerous precedent.

Preamble.

The question that the Preamble stand part of the Bill was put and agreed to.

The Hon'ble Khwaja Sir NAZIMUDDIN: Sir, I beg to move that the Bill, as settled in Council, be passed.

The Government are very grateful to the members of this House for the very careful and thoughtful way in which they have assisted Government in removing defects and improving the Bill. There is no doubt that it is an extremely difficult Bill and their assistance has been extremely valuable. In this connection I am sure that Government and members of this House must express their thanks to the Board of Economic Enquiry and its President who did the major portion of the spade work and submitted a draft Bill on the basis of which the present Bill was framed. We are also grateful to the members of the Select Committee who spent a considerable time and devoted their energies to this work. I am sure the House will also acknowledge the services rendered by Mr. Townend in putting up the Bill. The enormous amount of work he had to do and the very fact that such a large number of short-notice amendments had to be moved show how difficult and complicated this work was.

Sir, I have very little to add to what I have already said in my previous speeches on this Bill. Certainly this measure is in the nature of an experiment so far as Bengal is concerned, but this experiment has already been tried in two other provinces. As I have said before, this question of scaling down the debts of the cultivators owing to the abnormal economic condition prevalent all over the world has necessitated the taking of drastic action, and I may be pardoned for repeating it, but all the same it is a well-known fact which has been stressed upon by practically everyone who has had to consider the ways and means for meeting this abnormal economic condition. They have, one and all, suggested that one of the first things that the Government ought to do is to reduce the burden of indebtedness from the shoulders of the cultivators. Such reduction is expected to increase the purchasing power of the cultivators and thereby improve the economic condition of the province as a whole. It is a well-worn platitude, Sir, that the prosperity of a province depends chiefly upon the prosperity of its cultivators, and anything that we do to improve the purchasing power of the cultivators will tend to improve the economic condition of other

sections of the population also. When I claimed that this Bill would benefit both the debtors and the creditors, I was referring more to this aspect of the question that in the long run everyone in this province would benefit from this measure apart from the few special advantages which the creditors may have received under the Act. Sir, I am sure everyone will agree that we have already taken a great deal of time over this Bill, and I submit that no further speeches are perhaps necessary on that ground. The question has been discussed very fully by the House, and I do not think we need take further time of the House on this occasion. I therefore commend my motion to the acceptance of the House and hope that they will accord their approval to it.

Mr. S. M. BOSE: Sir, at last the end is in sight. This Bill, I maintain, is one of an exceptional and novel character as the Hon'ble Member has himself remarked more than once. The provisions of the Bill are unknown anywhere else and they run counter to many of our cherished ideas and ideals. Sir, we who have been suckled on principles of jurisprudence, well established and well rooted in every society, were very much upset when the Bill was first introduced, as it seemed to us to run counter to many of our preconceived ideas of established rights and duties. But, Sir, having regard to the grave emergency which was beyond doubt, and having regard also to the fact that this Bill was stated to be of a temporary character, we all wanted to make its provisions, so far as we could, practicable and consistent with certain well-established ideals. So I maintain that the careful scrutiny that the Bill has undergone here was thoroughly well deserved. Sir, we are making new history and we are undertaking legislation of a kind that has never been done anywhere else. I therefore regret the remarks of the Hon'ble Member in charge when he said that our opposition to some of its provisions was really based upon hostility to the interests of the poor debtors and that ours was mere lip sympathy and that we are not really sympathetic at heart to the claims of the debtors. That remark, I submit, is most uncharitable and incorrect, and I must regret that it was the Hon'ble Member in charge of the Bill himself who made that remark. I deny the correctness of that statement. It would be just as true to say that we acted with lip sympathy and in a spirit of hostility to the Bill, as it would be to say that he is piloting this Bill as an electioneering campaign or "stunt;" both these allegations would be equally unfounded. I think the Hon'ble Member most probably in the heat of the moment made that statement and I expect him in his reply to withdraw it.

Then, Sir, I would like to refer to the very great haste with which this Bill has been rushed through. As we know, the Bill was introduced in September last; the Select Committee sat in October and the Bill with the report of the Select Committee was presented to the Council about the end of November. The fact that there have been a large

number of amendments moved by Government, especially short-notice amendments, proves beyond doubt the very great haste with which the Bill has been rushed. I am well aware that in the March session during the Budget Debate it was not possible to pilot this heavy Bill through But I ask, why steps were not taken earlier? This Bill, as I have said is of very grave importance and requires very careful consideration and does not merit the tremendous hurry with which it has been rushed through.

Then, Sir, the Hon'ble Member has been good enough to pay a compliment to the members of the Select Committee, who, he said, devoted much time and thought to this Bill. But he has shown his appreciation by throwing overboard and jettisoning most of their unanimous recommendations; that is how he has expressed his thanks to the members of the Select Committee! Sir, I need only give a few instances. The Select Committee introduced the principle of distinction between secured and unsecured debts. That was accepted, if I may say so, unanimously and Government accepted it, and in fact Government tabled an amendment to shift the definition of secured and unsecured debts from the place where it was put, to the definition clause. But all on a sudden they seem to have turned a somersault as soon as Maulvi Abul Quasem's amendment No. 345 came up and though previously their amendment about secured and unsecured debts had been passed, they without any notice or intimation promptly accepted the deletion practically of the distinction, which was adopted unanimously between secured and unsecured debts. There have been many other cases where the recommendations of the Select Committee on questions of principle—I am not dealing here with drafting amendments—have not been accepted.

Then, Sir, I come to certain specific provisions of the Bill. I shall first deal with the constitution of the Boards and then deal with the most objectionable clauses, namely, clauses 13(3) and 20. As regards the constitution of the Board, many of us moved a great many amendments with the object of securing that these Boards or at any rate the compulsory Board should have a Chairman of tried judicial experience. In some cases we asked that this experience should be in the administration of civil law. To our surprise, not one of these amendments was accepted. It may be in the heart of the Hon'ble Member to provide for them by rules. We do not know whether he will do so. We may judge a man by outward conduct, but what is in his heart of hearts we do not know. When we attempted to put in the Act itself that the qualification at any rate of the Chairman of the compulsory Board and of the appellate officer should be laid down in the Act and not left to rules, and further, that he should be a tried judicial officer preferably with civil experience, our attempts did not succeed. Our very reasonable suggestion was refused. It is well

known that this compulsory Board at any rate will have to deal with many difficult cases and in some matters they will not have the help of lawyers. Lawyers are, I am afraid, taboo to Government. They may not, and perhaps I am almost certain they will not, be allowed before the Boards. Why, because they are suspected and because the Boards will be composed of men who have no idea of law and will dread lawyers. I do not know why; but they always do so. If on the other hand, the Boards were composed of men with judicial experience of long standing, then they would have appreciated lawyers' help. But no. There may be neither an officer of judicial experience to lead the Board and there may be an appellate officer with no knowledge of law at all and there may be no lawyers; so this is a most dangerous state of affairs.

Sir, further it has been provided that the members of the Board shall be guided under no legal rules. Law is not to apply, the Evidence Act is not to apply, the Civil Procedure Code is not to apply; nothing is to apply but what appears good to the Board. A reign of misrule and a reign of lawless law. Some of us have suggested, and I too have suggested, that the Chairman of the Board and the appellate officer should be men with experience of administration of civil law. We have for some reason or other a distrust of the executive. We do not want the executive to deal with such important matters affecting civil rights. We have had a sad experience of it. I refer to the far-famed and well-advertised Chandpur experiment. If the report is true, the executive officers there tried to force voluntary settlements, the so-called voluntary settlements. For instance, a case might happen where an executive officer in order to put pressure upon a creditor could summon him or her—sex has no protection—to appear before him wherever he might be in camp. It may be that an executive officer in order to force a creditor may raise his *chaukidari* tax, arbitrarily without any rhyme or reason, to a very high figure. Such cases are not imaginary and are stated to have happened actually at Chandpur over which the Hon'ble Member went into such ecstasies. We are, I regret, unable to share his ecstatic and frenzied fervour for the wonderful experiment. He stated that the Chandpur experiment was successful because Mr. Sachse had gone into the Chandpur records; that may be so, but did Mr. Sachse enquire into any of these complaints? There were no doubt a great many paper settlements—perhaps not worth the paper they are written on—and these were now trotted out to get this Bill passed.

Then, Sir, I turn to one of the most objectionable features of the Bill, namely, clause 13(3), against which we have strongly protested. As we know, clause 9 of the Bill permits applications being made by both the debtor and the creditor. When the debtor applies and the creditor fails to appear, the latter is penalised; but when the creditor

applies and the debtor defaults, the case is dismissed. This gross injustice is clear to every person who has the least modicum of a sense of right and wrong, and I would not labour further this point. It is, I submit, utterly against the principles of natural justice. The Hon'ble Member has put forward a wonderful plea. It does more credit to his power of self-delusion than to his intelligence. He has solemnly defied anybody to show where the Bill permitted of steps being taken against the unwilling debtor. That is exactly our complaint. Why was the Bill drafted like this, is our complaint. It is no answer to say that the clause is necessary, because it stands in the Bill.

Then, Sir, I turn to the most objectionable clause, namely, clause 20. As I have said over and over again, the clause is unique in the wide world. So far as I have been able to see, there is no such provision anywhere else; neither in the Hon'ble Member's favourite Punjab Act, in the Central Provinces Act, nor in the United Provinces Act. In the Madras Act of 1935 no such provision appears. In Mysore the Government report speaks of voluntary settlement. The same is the case in Zanzibar——

(At this stage the member having reached the time-limit was allowed to speak for 2 minutes more.)

There can possibly be no defence of this clause. Attempts made for restraining the debtor from alienating his land during this time have been defeated. Further, even when there is no award, the creditor may be penalised up to 10 years. I need not further labour that point. The Hon'ble Member practically admitted that this was a very unique and unheard-of measure unknown anywhere else; but he said that there must be evolution. Nobody objects to evolution, but this is a revolution—a violent upsetting of the settled order of society, uprooting the very foundations of society. The charge of communalism has been made. I say it is communism and I make that charge against Government. Government is pandering to the forces of communism which is just rearing up its head in certain parts of this country. Government is robbing Peter to pay Paul; in order to placate some people Government proposes to throw those, who have served them well but whose only fault is that they possess little money, over to the wolves. I maintain, Sir, that for this single clause the Bill stands condemned and should be rejected. I further say that a great many important principles of the Bill are to be regulated by rules. That we have already objected to. The Hon'ble Member has just now said that it is an attempt to revive the old system of *panchayeti*; that system is practically dead. And that golden age of innocence and simplicity when there were no laws, no police, and men were honest and god-fearing; if ever such a golden age existed, it is long past or perhaps will come in the dim distant future. The society is now more and more complex. With these words I beg to oppose the motion.

Mr. SHANTI SHEKHARESWAR RAY: At the outset I want to congratulate the Government of Bengal on one thing. After all, they have given up their traditional policy of wait and see. When I recall their attitude two years ago when the Money-lenders Bill was before this House and see their attitude to-day, we cannot but congratulate Government. At any rate, if I may use the language of a British statesman, the inelastic and wooden element in the Government has given way to a progressive element. When I congratulate Government on their initiative, I do not necessarily accept all they propose to do now. So far as the question of toning down or reducing the debts of the poor agriculturists in Bengal is concerned, it is a matter that has our whole-hearted support. It is true that if this call for sacrifice had come two years ago when the economic situation was worse, it would have met with more general response than now. The Government of Bengal missed a great opportunity in not coming forward with a golden measure like this two years ago. So far as this particular measure is concerned, I must admit that it is very difficult to offer any considered opinion. The first difficulty is this: that the whole picture is not before us. Government have left so many things unsaid but they have taken so much power into their own hands; they propose to do so many things by virtue of their rule-making powers which they have obtained under this Bill. Frankly speaking, it is very difficult to say whether this measure is really going to do good to the country or not. Now and then during the course of the discussion sometimes Mr. Townend and sometimes the Hon'ble Khwaja Sir Nazimuddin has given expression to what is going on in the minds of Government just at present. But it is not possible to place much reliance on such statements because after all they have been made on the spur of the moment. We do not know what will be the attitude of the Government of Bengal when they publish these rules. So long as these rules are not published, so long as the picture is not filled up, there may be misunderstanding and misapprehension. It is for this reason that we have been pressing upon Government to place the full picture before us so that there may be no misunderstanding or misapprehension. A measure like this depends on what impression it makes on the public mind. If you make a wrong start, the whole purpose of the Bill will be frustrated and all the good intentions of the Government will be undone. That is a danger against which we wanted to guard and we have insistently been pressing upon Government to give us a clear and definite idea as to what their intentions are, as regards the different principles that we have accepted. It is no use for the Government of Bengal to say: "Well, you accept the principle and leave everything to us." I ask the Government of Bengal to realise our difficulties in the matter. On the one hand you tell us: "Well the *zemindars* have no cause for alarm, we are making a provision for the realisation of rent; we are leaving current rent outside

the scope of the Bill, and we are providing for the realisation of the arrears." That is all right. But the trouble is there. While on the one hand the Government of Bengal say: "Here is your safeguard so far as the *zemindars* are concerned," on the other hand, there is the penalty clause that is dangling before our eyes. There is nothing certain as to what is going to be the order of payment so far as debts are concerned. The *zemindar* may lend his support to the Bill on the plea that his rent is secure, but it may so happen that the authority entrusted with the work of toning down the debt may say that unless you reduce your demand by 50 per cent. you will have to wait. This will mean a total dismissal of the claim because by the time the other creditors who get precedence for their dues are cleared off, there may be nothing left for the *zemindars*. While under the present law rent is the first charge, by the dispensation of Government it will be the last and perhaps a forlorn charge. This vagueness is bound to create misunderstanding and misapprehension. I know the House has accepted the broad principles of the Bill by a great majority and passed clause after clause, so it is no use at this stage to make a fresh submission to alter its decision. I will not make any submission at all, but I know under the constitution there is a safeguard against the tyranny of the majority. The safeguard is there that the vote of this House is not necessarily final. The constitution has provided that it must receive the assent of His Excellency the Governor and His Excellency the Governor General. I am making this submission, that this expression as embodied in the Bill which I as a *zemindar* consider to be nothing short of tyranny by the majority (KHAN BAHADUR MUHAMMAD ABDUL MOMIN: Unsympathetic.) will receive proper consideration in Their Excellencies' hands. If there is any substance in my contention, I hope the wrong done to the *zemindars* of Bengal will be remedied and that with necessary corrections and amendments this Bill will come back for reconsideration by this House. Why I lay so much emphasis on this point is this: That Government cannot afford in connection with a measure like this to antagonise an important section of the people. I mean the *zemindars* and *mahajans* of Bengal. If they are antagonised, if they feel that an injustice has been done to them in this connection it will be impossible for the Government of Bengal to enforce this Bill. After all, they play a large part in the affairs of the country and an effort should be made to reconcile their interests with the interests of the agriculturists. That will be the way to success; that will achieve the purpose.

Then there is another aspect of the question which I emphasised the other day—I mean the communal aspect of the measure. It is no use denying the fact that this measure has assumed a communal aspect; rightly or wrongly, an impression has got abroad in the country, especially in the rural areas, that this measure will largely affect the interests of the Hindu community in Bengal. In Northern Bengal

and Eastern Bengal districts the Boards will be composed naturally of a majority of Muslim members. Government should leave no stone unturned to disabuse the public in the matter. Once this impression gets abroad and it is firmly held by the people that this is a measure likely to hurt the Hindu interests, it will not be possible for the Government of Bengal to give effect to it. What I suggest is this: That every effort should be made to dispense with the provisions of the Bill as well as in actual working anything that may lead to communal strife. There is enough trouble already in the country: Hindus and Muslims are both in the grip of economic depression, and in the name of amelioration of the condition of the people, this measure should not come as an apple of discord. You cannot possibly create good will if there are seeds of strife in a measure. I shall not deal with particular clauses because some of these have been dealt with by Mr. S. M. Bose. I do not want to deal with legal technicalities because I myself am not a lawyer. Personally, I would like that in such matters—in such disputes—it is better that lawyers should keep aloof, but at the same time, Sir, Government have taken great responsibility in dispensing with the normal procedure in such a matter. Within the limitations of the Bill, if possible, I think it ought to be——

(The member having reached his time-limit had to resume his seat.)

Maulvi ABUL KASEM: I rise to offer my congratulations to the Hon'ble Member for having so successfully piloted the Bill through this Council, and I think the thanks of this House—and what is more—of our constituency behind us are also due to Mr. Townend and Mr. Sachse for their labours in this direction. Sir, in this province there are very few members—and their number can be counted on the fingers of one hand—who have devoted their opportunities either as District Magistates or in any other capacity, to the welfare, advancement, protection and safety of the cultivating classes as did Sir Nicholas Beaston-Bell of yore, and Mr. Sachse of the present House, and our thanks are due to Mr. Sachse also.

Sir, violent opposition was sounded by my friend Mr. S. M. Bose with regard to this measure. He has criticised—though briefly—in a lengthy speech the various clauses which have been discussed and disposed of. The brunt of his arguments seems to me that lawyers and brilliant members of the legal profession have not been treated with due respect in the provisions of this Bill, as they form neither the Chairmen of these Conciliation Boards, nor are they allowed to appear on behalf of the parties to argue their cases. We have been told that the Chairmen of these Boards will be rustic people, actual cultivators, who will not be acquainted with the legal procedure and forms or Acts of the legislature. I submit that so far as Bengal is concerned—and it is the case also with other provinces in India—the actual village

cultivators have a better common-sense and have a better sense of what is fair and just. So admission of lawyers will not be of use to anybody. In this connection, Sir, I am reminded of a short story that happened within the precincts of the Law Courts in England. A barrister was defending a criminal before a Court of Sessions and the barrister made such an eloquent address that it convinced the Jury and it returned a verdict of "not guilty." When the accused came out of the Court, he at once ran to him, shook hands, and said to his barrister: "After all, you have got me justice." But the barrister replied: "Get out of my way: I have not got you justice, but law, for which I was paid." Sir, we do not want law, but we want justice; and we want that our rustic countrymen in the villages should get justice and not merely law.

Mr. S. M. Bose remarked that the days of *panchayets* and those of innocence and peace, when fraud and chicanery were unknown, are gone. I agree with him, Sir, but what we are now trying to do is to bring back again the golden days of India and to undo the mischief that has been done by volumes of legislation and other Acts. Mr. Shanti Shekhareswar Ray in his vigorous style made a great appeal and expressed the hope that His Excellency the Governor would refuse his assent to the Bill until certain modifications are made therein. Sir, he may have reasons for his expectations, but what I say is that he has been very eloquent with regard to the *zemindars* and he has also told the Hon'ble Members of the Treasury Bench as well as other people that the antagonism of the *zemindars* will be a suicidal and dangerous element. I should say, Sir, that these pet boys of Lord Cornwallis have been enjoying the advantages of the Permanent Settlement for more than a century, and the sooner they go out the better. They talk with contempt about the cultivators and villagers, but they must remember that the cultivator is the earning member of the whole family. The family of Bengal depends upon the man who ploughs the land and whom for centuries you and I have exploited. Sir, the antagonism of the *zemindar* and of the *mahajans* need not alarm us. Suppose to-morrow, as it is bound to be, if things go on as they are going on, the cultivator by reason of his debts and disease is unable to carry on his work, where will your lawyers be, or as a matter of fact where will your Magistrates and Judges or even your Members of the Treasury Bench be? Where will you get your money from to pay your expenses? It is very fine to parade your money and your clothing and pride yourself on your elegance, but you cannot afford to forget that the man who pays for your bread is the actual tiller of the soil: No intermediary or the lawyers.

There is another thing to which I beg to draw your attention. It has been said that this Bill has tended to breed communalism between

and capacity, to understand who are communalists and how communalism enters in this piece of legislation. My friend Mr. Shanti Shekhareswar Ray fails to understand that cultivators are both Hindus and Muhammadans, though the cultivators in Western Bengal are generally Hindus and in Eastern Bengal generally Muhammadans. Under these circumstances I think this criticism, instead of being helpful and useful, it is unconvincing to my mind.

One word more, Sir, and I have done. The Hon'ble Sir Nazimuddin and his colleagues in the Treasury Bench have been responsible for some very excellent pieces of legislation, but so far those Acts, beyond increasing the volume of the statute book, have done nothing more. The Primary Education Act, the Waterways Act, the Land Development Act and many other Acts have been passed, but they are as much a dead letter as anything else. It has been said that in this case Government have been very hasty, but we rather think that they have been guilty of delay and criminal neglect in not taking up the matter earlier. It has already been discussed long and threadbare and so there has been no haste in the matter. On the other hand, there has been a good deal of laziness.

I also offer my thanks to the Select Committee for their labours; although they had a good time of it in the heights of Darjeeling, still they did a lot of useful work there and our thanks are due to them. I hope, Sir, that immediate action will be taken on this Bill without a moment's delay and that it will not be allowed to rot and rust in the archives of the Government's Legislative Department just as the Acts I have mentioned are doing now. In that case, all this labour and trouble will be of no use. Somebody also said that this Bill will act as a very good electioneering stunt. I say, Sir, that even as an electioneering stunt this Act will have no value, for our people in the villages, clever as they are, although not lawyers, these rustic people, they understand the situation very well and are not to be convinced by the good intentions in the Bill unless they find some tangible proof of something having been done for their benefit.

It has also been said, Sir, that there are many defects in the Bill. I would like to ask my friends what human action has ever been free from any defect, much less an Act of a legislature. If that be so, if every Act of a legislature were perfect in itself for all time to come like the *Quoran* in which we believe, there will be no use for the House of Commons and the House of Lords, or the Senate in France, or of any other legislative bodies in the world. Therefore, legislatures exist for correcting mistakes from time to time.

Mr. S. M. Bose has complained that Mr. Townend and the Government have turned a somersault. If that is true, Sir, I must admire Government for this, for it shows that when they found out their

mistake, they had the courage to admit it and make amendments accordingly. This is all the more creditable to them and to the Treasury Bench.

I once more appeal to the Hon'ble Member and to the members of the Treasury Bench that they will take all the steps that they can, in order that this Act may not lie in a moribund condition. Unless such action is taken, all the congratulations and all the labours undertaken by them and us and all the acrimonious debates that we have had will absolutely be of no avail. In that case, this piece of legislation will not serve even as a window-dressing. It must be put in operation and action taken immediately and without delay.

Nawab MUSHARRUF HOSAIN, Khan Bahadur: Mr. President, Sir, I want to congratulate Government for the bold step they have taken in bringing forward a Bill like this. At the same time I would also utter a note of warning to Government. Government have kept a lot of power in their hands so far as this piece of legislation is concerned. The legislature has been denied the right of declaring the order in which the amounts of debt should be paid. The Government have reserved the power of making rules as to the order in which the debts should be cleared. In doing this I would ask the Government to bear in mind that the rent should under no circumstances be considered as a debt of such a nature that it could be put off for indefinite number of years. Sir, just the other day I went to Jalpaiguri and I heard two of my big *zemindar* friends saying that if as a result of this Bill the arrears of rent were not paid by the tenants, all the big *zemindaries* of North Bengal will be sold up in aution for arrears of Government revenue. Sir, that is the point of view that I have heard from *zemindars*. A tenant friend of mine also came to me and told me that if the *zemindar's* rent be treated as a debt the tenants would be put to great difficulty as they would not dare to go against the *zemindar*, and it would be of no advantage to them to take protection under this Bill, which would allow the scaling down of their debts to other creditors. So these matters ought to be borne in mind by the Members of the Government Bench when they framed rules for working the Act. Then, Sir, the case of secured and unsecured creditor has also been discussed in this House and Government should not forget, when framing the rules, that the secured creditors should not be allowed to lose their money. When the matter was discussed in this House, we took a lively interest in the disposal of matters, but unfortunately the Government with its strong majority carried the point practically at the point of the bayonet. However, although that has been done, still as the power has been reserved by Government, I hope that in exercising the power, Government will do it in such a way that the apprehensions which have been aroused in the minds of our friends will be allayed.

Then, Sir, the question of lawyers being allowed to appear before the Board has been debated here and the very scheme which Government have presented before the House is based on the two sections of the Act and these are the only two sections which are good enough for the success of the scheme. Section 20 which has been objected to by many of my friends is the most predominating section and then comes section 45 of the Bill. Section 45 says that no procedure which is generally adopted in Civil Courts in dealing with a debt will be allowed here. Anybody who will say any untruth before the Board will be punished with 3 years' imprisonment. Really speaking, the people will shudder before they think of telling a lie there or concealing any fact. Section 20 gives the greatest weapon in the hands of the Board. This is a very predominant section and all the procedure that has been provided in the Civil Procedure Code for raising an issue by denying certain liabilities altogether goes out of court. When we cannot evolve any formula which our Boards should really avail of in bringing about a settlement, the weapon that is placed in the hands of the Boards of punishing a person who tells a lie will be quite enough to get rid of all sorts of false pleas which are generally taken by debtors. That section will prevent every debtor from telling a lie before the Board. If they are prevented in that way, they will tell the truth and nothing but the truth; what is there for the Board to decide except what is true? The same will happen in the case of a creditor as well. The creditor will not dare to tell a lie before a Board which has been empowered by this House to punish anybody who will tell a lie. So although the Civil Procedure Code which provides for the raising of an issue has been done away with, the other weapon of *lathis* is there. If you tell an untruth, if you raise a false issue, you will be punished with 3 years' imprisonment. With that weapon in hand, the Board working for the scaling down of debts will experience no difficulty.

I have not smelled communalism in this. If any of my friends say that there is a bit of communalism in it, I can tell him that while the most salient points were being discussed, I was one of the persons who supported them. If he says that communalism is at the bottom of some of the provisions of this Bill, I believe he is doing an injustice to his friends here. I can assure my friend that it is not from a point of view of communalism that we are giving our support to the Bill. But knowing how difficult the time is and what economic difficulties we are passing through, we are giving a stick in the hands of Government, saying that if anybody tells a lie he will be punished with 3 years' imprisonment, and in the other hand of Government we are giving another stick to use it when they find a creditor to be unreasonable. In that case, the Board will say that if you are not reasonable, we will give a certificate cancelling a debt or refusing it. With these sticks proper justice will be done. With these few words I congratulate the Member who has introduced these two systems—I mean the two sticks

—as I pointed out before and devised a scheme for scaling down the debts. I congratulate all those who put their energies into this thing and got the Bill passed.

Mr. W. H. THOMPSON: Mr. President, Sir, the time is very short, but I think there will be plenty of time for me to say the few words that I have to say. The last speaker but one has, in fact, taken most of my words out of my mouth, and I shall not repeat what he has said. In the earliest stages of the Bill, Sir, we in the European group found ourselves in the opposite lobby to the Government. I am not apologising for that. What we were out to emphasise was that very emergency which was emphasised by the Hon'ble Member himself in bringing the Bill before the House. We wanted to emphasise that it was an emergency measure and should have the form of an emergency measure, and I think the Hon'ble Member himself will agree that such improvements in that direction as have been made in the Bill at our instance have been real improvements. Sir, this is an experiment and we wish success to this experiment.

For the Hon'ble Member, I admire most of all his faith, his faith in the goodwill of the common people of Bengal. That faith, Sir, will be a great asset in any of our politicians of the future. In that faith is a hope of success for the future government of this province. I must also congratulate the Hon'ble Member on his conduct of the Bill through the House. That we in this group have not seen quite as much of it as we should have liked to see has been due to the fact that the Council has been meeting at the very awkward hour of 11 o'clock in the morning. Sir, the City of London like the City of Calcutta is a place of workers and the British Parliament never thinks of meeting at 11 o'clock in the morning. Three o'clock in the afternoon has been for centuries the time at which the British House of Commons meets and it goes in the next morning if necessary. We believe that here, too, this same practice is the best to be adopted in the case of great pressure of public business.

As regards the conduct of the Bill through the House by the Hon'ble Member, Sir, I have seen both inside and outside this House that he plays his cards well and in the conduct of this Bill he has undoubtedly done so. (Laughter.)

Mr. PRESIDENT: Order, order. The Council stands adjourned till 11 a.m. on Wednesday, the 18th December.

Adjournment.

The Council was then adjourned till 11 a.m. on Wednesday, the 18th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Wednesday, the 18th December, 1935, at 11 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, three Hon'ble Members of the Executive Council, two Hon'ble Ministers (the Hon'ble Khan Bahadur M. AZIZUL HAQUE being absent) and 96 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Sessions cases in Faridpur conducted by pleaders other than Government pleaders.

*42. **Rai Bahadur AKSHOY KUMAR SEN:** Will the Hon'ble Member in charge of the Judicial Department be pleased to lay on the table a statement showing for the period from 1934 to March, 1935—

(*i*) how many sessions cases were tried by the sessions courts at Faridpur; and

(*ii*) how many of such cases were conducted (for the prosecution) by pleaders other than the permanent Government pleader and the permanent Public Prosecutor?

Member in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): A statement is laid on the table.

Statement referred to in the reply to starred question No. 42.

(*i*) Ninety-five.

(*ii*) Forty-five.

Local Boards' Election, Khulna.

*43. **Mr. P. BANERJI:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware that at the scrutiny of

nomination papers for election to the Satkhira Local Board held by the Subdivisional Officer, Satkhira, on the 25th of October last as many as 24 nomination papers were rejected out of the 41 altogether submitted?

(*b*) Is the Hon'ble Minister also aware of a feeling that exists that like Satkhira, the nomination papers of a large number of candidates in the Sadar and Bagerhat subdivisions were also rejected on scrutiny on most flimsy grounds resulting in uncontested return of candidates from almost all the thanas?

(*c*) Is it a fact that as the result of such wholesale rejection of nomination papers, members from six out of seven tharas of the Satkhira subdivision have been declared as elected unopposed?

(*d*) Is the Hon'ble Minister aware of the grounds upon which such of the various nomination papers as are referred to have been rejected?

(*e*) If so, will the Hon'ble Minister be pleased to state the said grounds?

(*f*) Is it a fact that the nomination paper of Mr. Abul Quasem, a member of the Council and a candidate from Satkhira thana of the Satkhira subdivision, was rejected on the ground that in the column for the qualification it had been put down against his name that he was an M.A., B.L. and not that he was a graduate?

(*g*) Is it also a fact that the candidature of Syed Jalaluddin Hashemy was rejected because in the printed voters' list a "ditto" mark had been placed before his name, viz., Syed Jalaluddin Hashemy and the scrutinising officer consequently required that Mr. Hashemy should sign his name as Shaikh Syed Jalaluddin Hashemy?

(*h*) Is it a fact that the nomination paper of Dr. Pulin Krishna Das, M.B., a member of long standing from Phultala thana, was rejected on the ground that his supporter, Jogneswar Baity's title was read as "Bahity" and that in the chalan his title was written as "Dass" by his agent?

(*i*) Is it a fact that the District Magistrate of Khulna, on appeal under section 1(*l*) of the rules, has held the decisions of the scrutiny officer to be final in spite of rule 30?

(*j*) Is it also a fact that all the members so declared as elected unopposed belong to one party only?

(*k*) Has the Hon'ble Minister directed any enquiry into the circumstances under which the wholesome rejections referred to above came to be effected?

(*l*) What steps do the Government propose taking after calling for and examining all the nomination papers to undo the wrong and injustice done to the candidates whose papers have been improperly rejected?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (*a*) The total number of nomination papers submitted was 40 out of which 24 were rejected.

(*b*) Nomination papers of certain candidates in Bagerhat subdivision were rejected mainly on the ground that they were not prepared in accordance with the election rules prescribed under the Local Self-Government Act. Government have no information about Sadar subdivision.

(*c*) and (*d*) Yes.

(*e*) A Statement of the reasons given by the Subdivisional Officer for rejecting nomination papers of candidates in the Satkhira subdivision is laid on the Library table.

(*f*) and (*g*) No.

(*h*) Government have no information, but a report has been called for from the local officers.

(*i*) No appeal lies to the District Magistrate.

(*j*) No.

(*k*) and (*l*) The facts have been ascertained by enquiry. Under the law, the decisions of the Subdivisional Officer, Satkhira, which were taken in his judicial capacity and were recorded in open court in the presence of the parties are final and Government have no power to interfere.

Khan Bahadur MUHAMMAD ABDUL MOMIN: With reference to answer (*f*), will the Hon'ble Minister be pleased to state whether the grounds for rejecting the nomination of Maulvi Abul Quasem were not as those stated in the question?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The grounds are stated in the statement laid on the Library table, and I do not carry them in my memory.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I take it that by grounds the Hon'ble Minister means the order of the Subdivisional Officer, and in view of the fact that that order does not definitely state on what grounds the nomination papers have been rejected except that the particulars of qualifications of the candidate were not available, will the Hon'ble Minister kindly state whether the mention of "M.A., B.L." is not sufficient for the purpose?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I do not propose to express any opinion on the decision of the Subdivisional Officer taken in his judicial capacity. He has stated fully the grounds, and these have been incorporated in the statement laid on the Library table.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Will the Hon'ble Minister be pleased to state after a perusal of the grounds whether the nomination papers have been rejected improperly?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: That is a matter of opinion, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Is it not a fact that the Chairman of the District Board had several interviews with the Subdivisional Officer just before the time for submission of nomination papers?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information.

Mr. SHANTI SHEKHARESWAR RAY: Is it not a fact that on the 16th of October, at 7-30 p.m., the Subdivisional Officer and the Chairmen of the District Board and of the Local Board met at the residence of the Subdivisional Officer and examined all the nomination papers in camera?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information.

Babu SUK LAL NAG: With reference to answer (*f*), will the Hon'ble Minister be pleased to state whether the nomination paper of Maulvi Abul Quasem was rejected for two or three defective points in it?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I believe so, Sir.

Mr. P. BANERJI: What is the reason that Government have no information so far as the Sadar subdivision is concerned, while they have information so far as the other two subdivisions are concerned?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, this question was put in connection with the rejection of certain nomination papers of the Satkhira subdivision. So, we made a reference to the District Magistrate and got information so far as that subdivision was concerned. There was no reference with regard to the Sadar subdivision nomination papers, and naturally we have no information.

Babu SUK LAL NAG: Is it not a fact that when the Divisional Commissioner lately had occasion to go through the various nomination papers of the Satkhira subdivision, he was perfectly satisfied that the officer concerned had acted properly in rejecting the nomination papers?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I do not think Government can state what the view of a particular officer is in the matter, especially when the decision was taken by an officer in his judicial capacity.

Maulvi SYED MAJID BAKSH: Is it not a fact that the Local Self-Government Act provides for the creation of a Tribunal when there is a case of election dispute?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir, to decide election disputes.

Maulvi SYED MAJID BAKSH: Has such a Tribunal been constituted up till now?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: There must be a representation in the first instance, and when there is one, I believe, to decide that case Government have got to appoint a Tribunal.

Maulvi SYED MAJID BAKSH: In case, an election petition is made, will Government consider the desirability of appointing——

Mr. PRESIDENT: The answer that the Hon'ble Minister gave just now was quite sufficient for your purpose. Besides, your question is hypothetical, and I cannot allow it.

Mr. SHANTI SHEKHARESWAR RAY: Is it not a fact that just a few days before the scrutiny of the nomination papers on the 25th October, the Subdivisional Officer dined with the nephew of the Chairman of the District Board——

Mr. PRESIDENT: I cannot allow that question. It is much too frivolous.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Considering that most of these nomination papers were rejected on flimsy grounds, will the Hon'ble Minister be pleased to state what remedy there is in the matter?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: He must take his own legal advice. Government cannot advise him on this point.

Maulvi SYED MAJID BAKSH: In connection with the ensuing election, will the Hon'ble Minister kindly take such steps as would prevent such frivolous actions being taken by Subdivisional Officers?

The Hon'ble Sir BIJOY PRASAD SINGH: Sir, Government do not admit that it was a frivolous action.

Maulvi SYED MAJID BAKSH: Is it not a fact that the qualification, as entered in column 4, should be literally stated by the candidate and not in any other way?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The rules are there, and the rules have got to be interpreted by the candidates properly.

Maulvi SYED MAJID BAKSH: If, therefore, "M.A., B.L." is not to be stated in column 4, will the Hon'ble Minister kindly say what else the candidate should have written?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I do not think this question arises out of the question at issue.

Mr. PRESIDENT: But that is a question of fact, and I think that it is relevant to the point.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The question as to whether the candidate should have stated any other thing besides stating that he was an "M.A., B.L.", is purely a matter for interpretation by the candidate concerned.

Maulvi SYED MAJID BAKSH: In view of that, is it not a fact that the action of the Subdivisional Officer was *ultra vires*?

The Hon'ble Sir BIJOY PRASAD SINGH SOY: I cannot follow as to what action is supposed to be *ultra vires*.

Maulvi SYED MAJID BAKSH: The Subdivisional Officer's action was *ultra vires* in that he did not accept the qualification as laid down in the rules. I want an answer to that point.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have already stated, Sir, in reply to the supplementary question put by Babu Suk Lal Nag, that the nomination paper of Maulvi Abul Quasem was probably rejected on more than one ground.

Babu AMULYADHAN RAY: Is it not a fact that the nephew of the Chairman of the District Board has been elected to the local board?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information.

Bagerhat Local Board election.

*44. **Maulvi ABUL QUASEM:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) what is the total membership of the Bagerhat Local Board in the district of Khulna;

(*ii*) how many members are elected from each thana;

(*iii*) how many are appointed by the Government;

(*iv*) how many candidates submitted nomination papers from each thana in connection with the forthcoming election to the Bagerhat Local Board;

(*v*) how many candidates from each thana were Muslims;

(*vi*) at the scrutiny of the said nomination papers how many nomination papers from each thana were rejected;

(*vii*) what were the specific grounds of rejection of each nomination paper;

(*viii*) how many of the rejected papers were from Muslims;

(*ix*) what facilities, if any, were afforded to the candidates from each thana or their agents to look into the nomination papers of the thana combined;

(*x*) what is the number, respectively, of Hindu and Muslim candidates from each thana who were declared elected at the scrutiny; and

(*xi*) in how many thanas is a poll going to take place?

(*b*) Is the Hon'ble Minister aware that the Muslims are the majority community in the Bagerhat subdivision?

(*c*) What is the ratio of the Muslims to the entire population?

(*d*) Is it a fact that most of the nomination papers were rejected on trivial points of form and technicality?

(*e*) Are the Government considering the desirability of calling fo all the nomination papers and satisfying themselves whether the deci sion of the officer holding the scrutiny was correct in each case?

(*f*) Are the Government considering the desirability of taking neces sary steps to undo the injury that has been done to candidates whos nomination papers were wrongly and unjustifiably rejected?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) Eighteen

(*ii*) Bagerhat	...	3
Fakirhat	...	1
Kachua	...	1
Mollahat	...	2
Morrelganj	...	2
Rampal	...	2
Sarankhola	...	1
Total	...	12

(*iii*) Six.

(*iv*) Bagerhat	...	6
Fakirhat	...	5
Kachua	...	5
Mollahat	...	6
Morrelganj	...	6
Rampal	...	5
Sarankhola	...	3
Total	...	36

(*v*) Bagerhat	...	2
Fakirhat	...	1
Kachua	...	2
Mollahat	...	3
Morrelganj	...	2
Rampal	...	1
Sarankhola	...	3
Total	...	14

(*vi*) Bagerhat	...	2
Fakirhat	...	Nil
Kachua	...	3
Mollahat	...	3
Morrelganj	...	4
Rampal	...	3
Sarankhola	...	Nil
Total	...	15

(*vii*) One nomination paper was rejected on the ground that the name of the candidate had not been given.

One nomination paper was rejected on the ground that the signatures of all the ten supporters were palpably work of one and the same hand. The candidate could not satisfy the Subdivisional Officer that they were genuine and was not prepared to swear an affidavit as to their genuineness though asked to do so.

Four nomination papers were rejected on the ground that the signatures of the ten supporters bore dates previous to that of the signature of the candidate himself.

The remaining 9 nomination papers were rejected on the ground that the particulars of qualification of the candidate or of his supporters had not been fully specified in the nomination paper.

(*viii*) Five.

(*ix*) Candidates and their agents were present at the scrutiny which was held in open court and were allowed to see the nomination papers.

(*x*)

		Hindu.	Muhammadan.
Morrelganj	...	1	1
Rampal	...	2	Nil

(*xi*) Poll has taken place in two thanas, viz., Bagerhat and Fakirhat. In the remaining three thanas, viz., Kachua, Mollahat and Sarankhola there was no polling as some of the candidates whose nomination papers had passed the scrutiny withdrew within three days of the scrutiny; the remaining candidates whose number was not greater than the number of vacancies were therefore declared duly elected.

(*b*) The Muslims are slightly in excess over the Hindus taking the subdivision as a whole, but in four out of seven thanas they are in a minority.

(*c*) 53·2 per cent. of the entire population of the subdivision are Muslims.

(*d*) Government are not prepared to express any opinion on the findings of an officer in his judicial capacity.

(*e*) and (*f*) The member is referred to the reply given to clause (*l*) of the short notice question asked by Mr. P. Banerji.

Mr. S. M. BOSE: With reference to answers (*e*), (*f*) and (*g*), do Government contemplate any change in law so as to provide for appeals in cases where nomination papers have been rejected on flimsy grounds?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have not yet taken the matter into consideration.

Mr. S. M. BOSE: Do Government agree that such matters should be heard by a judicial officer of civil experience?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government are not in a position to express an opinion off-hand.

Maulvi SYED MAJID BAKSH: What action do Government propose to take against officers who have acted palpably contrary to law?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government are not prepared to express any opinion, as I have already stated more than once, on a decision taken by an officer in his judicial capacity.

Babu SUK LAL NAG: With reference to answer (*b*), is it not a fact that the number of Muhammadan voters in Bagerhat thana is less than that of the Hindu voters?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I want notice.

Maulvi SYED MAJID BAKSH: If it appears to the Hon'ble Minister on a perusal of the record that the action taken by Subdivisional Officer has been contrary to law, will he be prepared to take action against that officer?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, that is a hypothetical question, and I cannot answer it.

Mr. SHANTI SHEKHARESWAR RAY: Is it within the power of Government, Sir, to dissolve a Board?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: No, Sir.

Babu SUK LAL NAG: With reference to answer (*c*), is it not a fact that the ratio of Muslim voters in the Bagerhat subdivision is less than that of the Hindu voters?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I ask for notice of that question.

Satkhira Local Board election.

*45. **Mr. SHANTI SHEKHARESWAR RAY:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that out of the fifteen members to be elected from the seven thanas in the Satkhira Local Board fourteen members have been returned unopposed; and

(*ii*) that a number of nomination papers were rejected?

(*b*) If the answer to (*a*) is in the affirmative, what are the reasons for the rejections of the nomination papers?

(*c*) Is the Hon'ble Minister aware—

(*i*) that members returned unopposed in this way from these thanas belong to one party;

(*ii*) that amongst others the nomination papers of M. Abul Quasem, M.L.C., and M. Jalaluddin Hashemy have been rejected?

(*d*) If the answer to (*c*) (*ii*) is in the affirmative, on what grounds were the nomination papers rejected?

(*e*) Is the Hon'ble Minister also aware—

(*i*) that when scrutinising the nomination papers the Subdivisional Officer of Satkhira paid no heed to the protest made under the election rules;

(*ii*) that the said officer did not allow these candidates to examine the papers of their rival candidates;

(*iii*) that he did not grant certified copy of his order thereon; and

(*iv*) that reference being made to him the District Magistrate has declined to interfere?

(*f*) Is the Hon'ble Minister considering the desirability of calling for the records in the matter in order to see whether there has been any irregularity or injustice in connection with the election?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) Yes.

(*ii*) Yes.

(*b*) The member is referred to the reply given to clause (*e*) of the short notice question asked by Mr. P. Banerji.

(*c*) (*i*) No.

(*ii*) Yes.

(*d*) The member is referred to the reply to clause (*b*) above.

(*e*) No.

(*f*) The member is referred to the reply given to clause (*e*) of the short notice question asked by Mr. P. Banerji.

Mr. SHANTI SHEKHARESWAR RAY: With reference to answer (*f*), will the Hon'ble Minister be pleased to state whether he has taken legal advice on the question of power of Government to interfere in these matters?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir, we have taken legal advice.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Minister be pleased to state if it is not within the power of Local Government to supersede a local body under certain circumstances?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir, it has.

Mr. SHANTI SHEKHARESWAR RAY: Is the Hon'ble Minister prepared to examine the desirability of superseding these local bodies and rectifying the error if Government is satisfied that there has been an error of judgment on the part of the final authority so far as elections to those bodies are concerned?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government cannot supersede a local body for the fault of an officer or for any defects in the nomination papers of certain candidates.

Satkhira Local Board election.

***46. Babu JITENDRALAL BANNERJEE:** (*a*) Is the Hon'ble Minister in charge of the Local Self-Government Department aware—

(*i*) that at the scrutiny of nomination papers for election to the Satkhira Local Board held by the Subdivisional Officer, Satkhira, on the 25th of October last as many as 24 nomination papers were rejected out of the 41 altogether submitted;

(*ii*) that as the result of such rejection members from six out of seven thanas of the subdivision have been declared elected unopposed; and

(*iii*) that all the members so declared as elected unopposed belong to one party only?

(*b*) Is the Hon'ble Minister aware of the grounds upon which the various nomination papers referred to in (*a*) (*i*) have been rejected?

(*c*) If the answer to (*b*) is in the affirmative, will the Hon'ble Minister be pleased to state the said grounds?

(*d*) Is it a fact that the nomination papers of Mr. Abul Quasem, a member of this Council and a candidate from Satkhira thana of the Satkhira subdivision, was rejected on the ground that in the column for the qualifications it had been put down against his name that he was an M.A., B.L., and not a graduate?

(*e*) Is it also a fact that the candidature of Mr. Syed Jalaluddin Hashemy was rejected because in the printed voters' list a "ditto" mark has been placed before his name, viz., Mr. Syed Jalaluddin Hashemy and the scrutinising officer consequently required that Mr. Hashemy should sign his name as Sheikh Syed Jalaluddin Hashemy?

(*f*) Has the Hon'ble Minister directed any enquiry into the circumstances under whch the rejections referred to in (*a*) to (*e*) came to be effected?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*), (*ii*) and (*iii*) The member is referred to the reply given to clauses (*a*), (*c*) and (*j*) of the short notice question put by Mr. P. Banerji.

(*b*) and (*c*) The member is referred to the statement laid on the Library table in connection with the reply given to clause (*e*) of the aforesaid short notice question.

(*d*), (*e*) and (*f*) The member is referred to the reply given to clauses (*f*), (*g*) and (*k*) of the said short notice question.

Maulvi ABUL QUASEM: Will the Hon'ble Minister be pleased to state, with reference to questions (*d*) and (*e*), that at the scrutiny held by the Subdivisional Officer of Satkhira, the only reasons given for the rejection of the nomination papers of the two persons mentioned in questions (*d*) and (*e*), were those suggested in these questions and nothing else, and that the candidates or their agents concerned were allowed to read only the objections as have been stated in these questions?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, the Subdivisional Officer's explanation is fully stated in the statement laid on the Library table.

Maulvi ABUL QUASEM: I find that in the report of the Subdivisional Officer it is stated that in Maulvi Abul Quasem's nomination paper, particulars of qualifications of the candidate and that of the supporting voters have not been stated in detail properly: Will the Hon'ble Minister be pleased to state what the Subdivisional Officer meant by particulars in detail?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: They have been clearly stated, and I would request the hon'ble member to read them and draw his own conclusions thereafter.

Maulvi ABUL QUASEM: Is the Hon'ble Minister aware that although under rule 22, the District Magistrate has got to prepare a register of persons qualified to vote for each polling centre, and that such a list is to be prepared from the assessment lists from enquiries made by persons specially deputed for the purpose and in such other manner as may appear expedient, the qualifications that were stated by Maulvi Abul Quasem were taken correctly from the printed and published voters' list prepared in accordance with that particular rule; and if so, will the Hon'ble Minister state what other things were necessary?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, I am not prepared to express any opinion on the decision of the officer taken in his judicial capacity.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Minister be prepared to instruct the Subdivisional Officers to be more sensible and legal in their action in scrutinising nomination papers?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I do not think that that question requires any reply, and I am not going to give it.

Maulvi ABUL QUASEM: What remedy is there for a person, to whom a Subdivisional Officer, acting in his judicial capacity, as the Hon'ble Minister has just now said, has done an injustice?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Sir, a judicial officer can always act according to the light in him and use his own judgment.

Maulvi SYED MAJID BAKSH: When the decision of a judicial officer is *ultra vires* in law, is there no remedy against that decision?

(No answer.)

Maulvi ABUL QUASEM: Will the Hon'ble Minister be pleased to state the reasons why no rules have yet been framed by Government under section 38A, determining the authority who shall decide and dispose of such elections?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The fact is that the rules have not yet been framed.

Maulvi ABUL QUASEM: Will the Hon'ble Minister be pleased to state what remedy is there in the absence of the rules which the law empowers a man to avail of for redressing his grievances?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: In that case, I would ask my friend to consult Mr. Page in the matter.

Maulvi ABUL QUASEM: But, in that case, who will pay for the costs?

(No answer.)

Local Board Election, Satkhira.

*47. **Khan Bahadur MUHAMMAD ABDUL MOMIN:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to lay a statement on the table showing—

(*i*) what is the number of thanas in the Satkhira subdivision of the Khulna district;

(*ii*) what is the total membership of the Satkhira Local Board.

(*iii*) how many members are elected from each thana; and

(*iv*) how many are appointed by the Government?

(*b*) Will the Hon'ble Minister be pleased to lay on the table a statement showing—

(*i*) how many candidates submitted nomination papers from each thana for election to the Satkhira Local Board on or before the 15th October, 1935—the last date fixed for the submission of nomination papers;

(*ii*) how many candidates from each thana were Muslims;

(*iii*) at the scrutiny of the said nomination papers held on the 25th October, 1935, how many nomination papers from each thana were rejected;

(*iv*) what were the specific grounds of rejection of each nomination paper;

(*v*) how many of the rejected papers were from Muslims;

(*vi*) what facilities, if any, were afforded to the candidates from each thana or their agents to look into the nomination papers of the thana concerned;

(*vii*) what is the number, respectively, of Hindu and Muslim candidates from each thana who were declared elected at the scrutiny; and

(*viii*) in how many thanas is a poll going to take place?

(*c*) Is it not a fact that the Muslims are the majority community in the Satkhira subdivision?

(*d*) Is it not a fact that the nomination paper of a particular candidate from the Satkhira thana was rejected on the ground that he had stated as his qualification "M.A., B.L." instead of "graduate"?

(*e*) Is it a fact that the letters "M.A., B.L." were printed as the qualification of the candidate concerned in the voters' list as prepared under rule 22 and published under rule 23 and were only copied therefrom?

(*f*) Is it a fact that the said candidate made an application for insertion of an additional qualification of his as a voter, namely, payment of union rate and that the said application was duly recommended by the authorities of the Union Board concerned?

(*g*) Why was not the additional qualification taken into consideration at the scrutiny?

(*h*) Are the Government aware that great dissatisfaction prevails in the public mind at the way in which the scrutiny was held and nomination papers were accepted or rejected?

(*i*) Is it not a fact that most of the nomination papers were rejected on trivial points of form and technicality?

(*j*) Are the Government considering the desirability of calling for all the nomination papers and of satisfying themselves that the decision of the officer holding the scrutiny was correct in each case and of taking steps to undo the injury that has been done to any candidates whose nomination papers were wrongly or unjustifiably rejected?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) Seven.

(*ii*) Twenty-two.

(*iii*) A statement is laid on the table.

(*iv*) Seven.

(b) (i) The number of candidates who submitted nomination papers from each thana is as follows:—

Satkhira	...	6
Kalaroa	...	5
Tala	...	8
Debhata	...	3
Kaliganj	...	11
Assasuni	...	5
Shyamnagore	...	2
Total	...	40

(ii) Number of Muslim candidates from each thana was as follows:—

Satkhira	...	5
Kalaroa	...	3
Tala	...	2
Debhata	...	1
Kaliganj	...	3
Assasuni	...	2
Shyamnagore	...	Nil
Total	...	16

(iii) The following number of nomination papers from each thana was rejected at the scrutiny:—

Satkhira	...	3
Kalaroa	...	3
Tala	...	5
Debhata	...	2
Kaliganj	...	8
Assasuni	...	3
Shyamnagore	...	Nil
Total	...	24

(*iv*) The member is referred to the statement laid on the Library table in connection with reply given to clause (*e*) of the short notice question asked by Mr. P. Banerji.

(*v*) Of the 24 rejected nomination papers, 11 were from Muslims.

(*vi*) Everything was done by the Subdivisional Officer in open court in presence of the candidates and their agents. The merits of defects and irregularities in each nomination paper were pointed out to the candidates for the thana and their agent if any. Those who wanted to see any paper were allowed to do so.

(*vii*) The number of Hindu and Muslim candidates from each thana, who were declared or elected at the scrutiny are as follows:—

Satkhira	...	3 Muslims.
Kalaroa	...	1 Hindu and 1 Muslim.
Tala	...	2 Hindus and 1 Muslim.
Debhata	...	1 Hindu.
Kaliganj	...	3 Hindus.
Assasuni	...	2 Hindus.
Total	...	9 Hindus and 5 Muslims.

(*viii*) Polling will take place in one thana, namely, Shyamnagore thana.

(*c*) Yes.

(*d*) No.

(*e*) The letters "M.A., B.L." appear in the voters' list against the name of Maulvi Abul Quasem, M.L.C.

(*f*) Yes.

(*g*) Because it was not in his nomination paper.

(*h*) No.

(*i*) Government are not prepared to express any opinion on the findings of an officer in his judicial capacity.

(*j*) The member is referred to the reply given to clause (*l*) of the short notice question asked by Mr. P. Banerji.

Statement referred to in the reply to clause (a) (iii) of starred question No. 47.

Name of thana.	Number of members elected.
Satkhira ...	3
Kalaroa ...	2
Tala ...	3
Debhata ...	1
Kaliganj ...	3
Shyamnagore ...	1
Assasuni ...	2

Maulvi ABUL QUASEM: Will the Hon'ble Minister be pleased to state in reference to the answers given by him, the reasons why Government have not been pleased to frame rules under section 138 (*d*) where it is stated, generally, determining relation between District Boards and Local Boards and for the guidance of both non-officials and Government officers in all matters connected with the carrying out of the provisions of this Act, and for the guidance of Government officers regarding the scrutiny of nomination papers?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I ask for notice.

Maulvi SYED MAJID BAKSH: May I ask the Hon'ble Minister whether when an action is *ultra vires* or illegal, we can take action under the residuary power?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have already answered the question. Our legal advice is that no action can be taken.

Hindu Satkar Samity.

*48. **Babu JITENDRALAL BANNERJEE:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government (Medical) Department be pleased to state—

(i) whether it is a fact that a Society called the "Hindu Satkar Samity" has been registered under the Societies' Registration Act for the removal of unclaimed Hindu dead bodies from the hospitals of Calcutta and for the disposal of the same according to the Hindu rites;

(*ii*) whether it is a fact that the said Samity made a representation in 1933 to the Surgeon-General with the Government of Bengal requesting him to pass formal orders for delivery of unclaimed Hindu dead bodies to the Hindu Satkar Samity; and

(*iii*) whether it is a fact that the Surgeon-General was pleased to submit the proposal of the Samity to the Government of Bengal with the request that orders on the subject might kindly be issued at an early date?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Minister be pleased to state the actual state of affairs regarding the said correspondence?

(*c*) Is it a fact that the unclaimed bodies of the men of other communities, e.g., the Christians, the Muhammadans, etc., are promptly made over to organisations of their respective communities?

(*d*) If the answer to (*c*) is in the affirmative, will the Hon'ble Minister be pleased to state whether it is intended to follow a different policy in the matter of the disposing of Hindu dead bodies in Government hospitals?

(*e*) Is it a fact that the grants are made by the Government to the Muslim and Christian organisations for the disposal of the unclaimed dead bodies of the communities represented by them?

(*f*) If the answer to (*e*) is in the affirmative, will the Hon'ble Minister be pleased to state the actual amount so contributed year by year?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) Yes.

(*ii*) and (*iii*) The Samity addressed the Superintendents of Medical College and Campbell Hospitals in 1934, and their representation was forwarded by Surgeon-General to Government.

(*b*) The matter is under the consideration of Government.

(*c*) Dead bodies of persons of other communities are handed over to organisations of their respective communities when they are claimed.

(*d*) and (*e*) No.

(*f*) Does not arise.

Establishment of union boards in Diamond Harbour.

***49. Mr. P. BANERJI:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether Government have issued any order to the Subdivisional Officer,

Diamond Harbour, to stop all attempts on the part of the public to ventilate their grievances regarding the introduction of union boards in the Magrahat, Falta, and Diamond Harbour thanas of the Diamond Harbour subdivision?

(*b*) If the answer to (*a*) is in the negative, will the Hon'ble Minister be pleased to state the reasons why restraint order under section 144, Criminal Procedure Code, not to address any meeting regarding union board is being served upon all important public men of the locality?

(*c*) Is the Hon'ble Minister also aware that the local police, particularly of the Magrahat thana, are not allowing any meetings regarding union boards to be held within their jurisdiction even by those who have not been served with any order under section 144?

(*d*) Are the Government considering the desirability of—

(*i*) enquiring into the matter and issuing orders to the local officers not to put any obstacle in the way of the public to ventilate their legitimate grievances to the Government by holding public meetings and obtaining signatures to the memorial to the Minister in charge of the Local Self-Government; and

(*ii*) eliciting public opinion in the matter by allowing the local people to hold public meetings at important centres of the subdivision in which both the public and the officers of the Government will participate?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) No.

(*b*) It is reported that restraint orders were served on five persons (who are not important public men) because, in the opinion of the Subdivisional Officer, their addressing meetings would lead to a disturbance of the public tranquillity.

(*c*) No.

(*d*) (*i*) and (*ii*) As the local officers are not putting any obstacles in the way no action is considered necessary.

Mr. P. BANERJI: What in the opinion of the Hon'ble Minister is the qualification of a person to be an important person in his estimation?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: In the opinion of Government persons are not considered important who have no local public importance.

Mr. P. BANERJI: Is the Hon'ble Minister aware that out of these five persons except Babu Rangalal Mondal four are lawyers?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government do not think that the mere fact that they are lawyers is sufficient to consider them to be men of very great public importance?

Mr. P. BANERJI: Is it not a fact that at Sangrampur many important persons of the locality addressed the meeting which was presided over by the Subdivisional Officer, Mr. Creek, and that they spoke against him?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I ask for notice, Sir.

Mr. P. BANERJI: Is it not a fact that persons who spoke in that meeting against the Subdivisional Officer were put under restraint?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I ask for notice.

Mr. P. BANERJI: Is the Hon'ble Minister aware that one of the persons is a Mukhtear and President-Panchayet and that he has been served with a notice of dismissal by the Subdivisional Officer?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information.

Mr. P. BANERJI: Is the Hon'ble Minister aware that the public meeting at Magrahat thana was dispersed by a *lathi* charge under the order of the officer in charge of the thana?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Bengal Government Press—Apprentice system.

16. Maulvi LATAFAT HUSSAIN: (*a*) Will the Hon'ble Member in charge of the Finance Department be pleased to state whether it is a fact that there is a paid apprentice system in existence in the Bengal Government Press, Alipore?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state the conditions under which these apprentices are appointed?

(c) Will the Hon'ble Member be pleased to lay on the table a statement showing the budget head under which the expenditure on the apprentices are charged?

MEMBER in charge of FINANCE DEPARTMENT (the Hon'ble Sir John Woodhead): (a) Yes.

(b) Apprentices are required to undergo practical training in the Press for a period of five years and are attached in the first instance to the temporary piece establishment from which they may be posted, as vacancies occur, to either the permanent piece or the permanent salaried establishment according to qualifications and ability. They have however, no claim to an appointment on completion of the period of apprenticeship. Apprentices who are found unsuitable may be discharged at any time during the period of apprenticeship. Qualified apprentices are granted certificates on completion of the prescribed term.

(c) The expenditure is debited to the head "46—Stationery and Printing—Government Presses—Bengal Government Press—Pay of Establishment—Operatives—Piece Establishment."

Samples of dietary articles in Campbell Medical Hospital.

17. Maulvi LATAFAT HUSSAIN: With reference to the reply to starred question No. 77 (b) (iii) on the 21st March, 1935, will the Hon'ble Minister in charge of the Local Self-Government (Medical) Department be pleased to state how the accepted samples of the following are preserved for reference in subsequent tenders:—

(1) Milk,	(5) Chana,	(9) Mango,
(2) Fish,	(6) Dabs,	(10) Dahi,
(3) Mutton,	(7) Oranges,	(11) Eggs,
(4) Butter,	(8) Plantain,	(12) Meat, and
	(13) Fowl?	

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Samples of perishable articles are not preserved.

Supply of dietary articles in the Campbell Medical Hospital.

18. Maulvi LATAFAT HUSSAIN: (a) With reference to the statement in reply to starred question No. 77(b)(i) on the 21st March, 1935,

will the Hon'ble Minister in charge of the Local Self-Government (Medical) Department be pleased to state—

(*i*) the rates given by the respective tenderers; and

(*ii*) the addresses of the successful tenderers?

(*b*) With reference to the statement in reply to starred question No. 77(*b*)(*iv*) on the 21st March, 1935, will the Hon'ble Minister be pleased to lay on the table a statement showing—

(*i*) the wards,

(*ii*) the number of the beds,

(*iii*) the dates on which the dietary articles, mentioned in the said statement, were supplied in 1934-35?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) and (*ii*) and (*b*)(*i*) and (*ii*) Statements are placed on the Library table.

(*b*) (*iii*) The dietary articles were supplied daily according to the requisition of the Deputy Superintendent of the Campbell Hospital.

Deputy Superintendent, Campbell Medical School and Hospital.

19. Maulvi LATAFAT HUSSAIN: (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether it is a fact that there is a post of Deputy Superintendent in the Campbell Medical School and Hospital?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to lay on the table a statement showing—

(*i*) the date of appointment of the present incumbent;

(*ii*) his qualification;

(*iii*) the duty he is to perform;

(*iv*) the salary drawn by him;

(*v*) the number of patients treated by him during 1934-35; and

(*vi*) the number of times he officiated as the Superintendent since his appointment?

(*c*) Will the Hon'ble Minister be pleased to state—

(*i*) whether the post of the Deputy Superintendent is in existence in the Medical Schools in Dacca, Chittagong, Jalpaiguri and Burdwan; and

(*ii*) if so, their salaries and qualifications?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) Yes.

(*b*) (*i*) 26th November, 1933.

(*ii*) A senior I.M.D. officer. A member of the B.M.S. (Upper) is now officiating during absence on leave of the permanent incumbent.

(*iii*) Copy of the rules of management in which the duties of Deputy Superintendent are enumerated is laid on the table in the Library.

(*iv*) Rs. 500 *plus* Rs. 127-8 Special Pay.

(*v*) He is not required to treat patients.

(*vi*) Nil.

(*c*) (*i*) Yes.

(*ii*) In the Dacca School the post is held by an I.M.D. officer. His pay is Rs. 400 *plus* Rs. 85 Special Pay.

In the other schools, the post is part time and is held by a teacher in the school who gets no allowance for this work.

Lower Kumar river.

20. Rai Bahadur AKSHOY KUMAR SEN: Will the Hon'ble Member in charge of the Irrigation Department be pleased to state what amount was spent by the Government of Bengal for dredging the Lower Kumar during the years 1930-34?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Khwaja Sir Nazimuddin): A statement is laid on the table.

Statement referred to in the reply to unstarred question No. 20, showing the amount spent by the Government of Bengal, Irrigation Department, for dredging the Lower Kumar during the years 1930-34.

Years.		Dredging.	Maintenance of bunds.	Total expenditure on dredging.
		Rs.	Rs.	Rs.
1929-30	...	2,33,689	79,083	3,12,772
1930-31	...	82,688	51,937	1,34,625
1931-32	...	39,549	34,799	74,348
1932-33	...	21,583	25,344	46,927
1933-34	...	37,487	61,324	98,811

GOVERNMENT BUSINESS

FINANCIAL BUSINESS

DEMAND FOR GRANT.

41—Civil Works—Provincial.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, on the recommendation of His Excellency the Governor I beg to move that a token sum of Re. 1 be granted for expenditure of Rs. 30,000 under "41—Civil Works—Provincial" in 1935-36 for conversion of the barrack No. 4 near the "Dum Dum Special Jail B" into a jail.

The Hon'ble Member in charge of Jails will explain the reasons.

Rai Bahadur Dr. HARIDHAN DUTT: I beg to move that the demand for the token sum of Re. 1 be reduced by annas 8.

At the outset I must make it clear that I have no serious objection to the expenditure for which a token sum of Re. 1 has been asked. But what I do want is that Government should consider whether it is not possible to economise on this occasion and to get their ideas and provision for a jail carried out with a less sum than is contemplated in the scheme which is under reference here. My information is that the scheme which has been adumbrated by the Government will cost our province no less a sum than Rs. 10 lakhs. I understand that this would mean extensive additions and alterations to the existing arrangements of jails in the neighbourhood of Dum Dum. It has been represented to us that instead of going into the whole of the scheme which has been arranged by Government of which this is only practically the beginning, the object can be easily achieved by adjusting the resources of Government in that locality in a different way and thereby a large saving of money would be possible. Incidentally, I would point out the disadvantage of the scheme which is under consideration of Government. We find that the surroundings of the proposed site are not at all ideal. We find that Messrs. Jessop and Company who employ a large number of labourers will be the immediate neighbours to this jail. Then we find that the Bengal Glass Works and a very congested *bustee* lie on the south of the site. There are private residences also, and it will be clear that there is a large bazar on the west of the site. Besides that, there is a church standing on the south-eastern corner of the site which may require acquisition for the widening of this scheme or for getting sufficient area. I understand that the Eastern Frontier Rifles who are at present located there will have to be dislocated from their present barrack which has recently been purchased by the Government of Bengal from the Government of India. These are some of the disadvantages which, I am not certain, whether Government have

taken into consideration, and if they have and if after consideration they think that that is the only possible arrangement, I must say that my objection must go. In this connection I would respectfully point out to the authorities that it is also possible to make a saving by going for some alternative schemes. The first scheme that I would suggest as an alternative is that the present special jail and the old additional special jail which stand on the opposite side of the Jessore Road, on a property which has nearly 90 *bighas* of land and which has some sort of walls around it, instead of dismantling the walls and going for a new site, should be acquired. It is worth while considering whether these sites should not be amalgamated into one scheme to give sufficient space for the expansion of the jail in the way desired by Government. As regards this scheme, I find that on the north-east there is ample open land which can easily be acquired. The property can be acquired at an estimated cost of Rs. 50,000 or thereabouts. There are four existing dormitories in the special jail with accommodation for about 1,600 prisoners and in the additional special jail to which I referred, accommodation for 2,000 prisoners could be made. In addition to this, there are independent buildings which would be suitable for the staff and other purposes. The reconstruction and remodelling of the special jail and the abandonment of the special additional jail would roughly cost Rs. 1,50,000, so that a complete scheme might be possible, say, within Rs. 2 or 3 lakhs. In any case, the cost would be much less than Rs. 10 lakhs which the Government propose to invest. We find that the office of the Indian National Airways can be utilised. These buildings are at the present moment practically doing no service, and they can be transferred to Government and utilised for their jail purposes. Then the materials which would be available from the unnecessary buildings both in the special jail and in the additional special jail may be utilised for the extension of the walls and similar other things. The great advantage, I humbly submit, of this scheme would be that the surroundings would be far more preferable for the present project; there are only some European residents on the east of the special jail and if this area is acquired, the position would certainly be preferable to the one which has been contemplated. Then I come to another alternative scheme, that is, the Berhampore detention scheme which we all know has excellent accommodation and has accommodation for 15 or 16 hundred prisoners. I do not know what will happen to these buildings after the detenus are released. It is expected that they will be released after a time—I cannot say after what time—and the detenus may not require any accommodation, and detenus may be a thing of the past. In any case, it is worthwhile finding out whether the Berhampore Detention Camp could not be utilised for the purpose of the jail expansion as suggested by Government.

The third alternative is this. In connection with our district jails extension may be made for the accommodation of these prisoners. In

that case you will have certainly division of the jail in different parts. It may be said that it will be unsatisfactory or undesirable. I am not an expert. But if you extend the district jails and distribute your prisoners into different groups in these district jails, it may be possible to keep down your charges for superior establishment to a very large extent. I would respectfully ask the originators of the scheme—I mean Government—to consider whether it is feasible, that instead of having a large congregation of these prisoners in one locality and having a large establishment with various expensive recurring charges, financially distressed as we are, to have the accommodation in the different districts of Bengal in which the jails are already complete with their officials. It may be possible then for officials as well as their subordinates here and there to be accommodated in them. Sir, these are the schemes which I am placing before the Government for their consideration. As I have already said, I have no intention to stand in the way of this project of theirs. I have already indicated in my motion that my whole object is to bring before the Council, and particularly before the Government, these alternative schemes, and I hope that they will receive consideration at the hands of the proper authority. This is all that I have to say in moving my motion.

Mr. P. BANERJI: I beg to oppose the motion of the Hon'ble Member for the simple reason that the circular issued by the Public Works Department says that in 1930 the number of prisoners and convicts in the jails has gone down, etc.

That proves in a nutshell that the jail population to-day has been very much reduced and, therefore, I fail to understand why there should again be this proposal for incurring so much expenditure on a building for extra jail accommodation. As has been pointed out by Dr. Haridhan Dutt the result of constructing this additional jail at Dum Dum will be that the district jails will remain empty. That being so, when there is paucity of funds I do not understand why Government should start constructing a new jail and spend so much money on it. On the eve of the new reforms the people expect that there will be wholesale releases of political prisoners as is done everywhere in the European countries.

The Hon'ble Mr. R. N. REID: It will be done here too.

Mr. P. BANERJI: We shall be very glad if the Hon'ble Member is pleased to do that.

The Hon'ble Mr. R. N. REID: We have done that.

Mr. P. BANERJI: Yes? I do not know that it has been done. All that we know is that as a result of the truce with Mahatma Gandhi some civil disobedience prisoners were sent out. We notice that Government have changed their policy and as regards the detenus who were

living outside, Government is trying to bring even them into camps and educate them and make useful citizens of them. That being the policy of Government I fail to understand why they should incur this additional expenditure.

Mr. PRESIDENT: Mr. Banerji, I am sorry you will have to be brief, the Hon'ble Member must be given a chance of replying to the debate and only a few minutes are available for the discussion of this particular matter.

Mr. P. BANERJI: All right, Sir. We shall be very glad to hear the Hon'ble Member. But I must submit to you why, in view of the fact that the Hon'ble Member states that he has released so many prisoners, the major portion of them who have suffered for their opinions should not yet have been released. And if a considerable number of such prisoners are released then the present accommodation in the existing district jails would be quite sufficient for the purpose. So I do not see the necessity of spending money on this project at the present moment, at this dull season, so to say. Therefore I consider that the detenus should be released--people who have suffered enough for their opinions—and thus accommodation may be found for convicts who come next. On the ground of unnecessary expenditure I oppose the motion.

The Hon'ble Mr. R. N. REID: Sir, I have only some five minutes in which to reply to the motion. The first point to which I would like to reply is Mr. P. Banerji's remark that this is a dull season for jails and that there is no reason to find extra accommodation to put in more prisoners. But, the facts are totally different. He says that the jail population has been reduced. I do not know, Sir, what is the source of his information for saying so, but my source of information tells me that on the 28th November, 1935, there were 17,977 convicts in our jails, whereas accommodation actually existed only for 16,810 prisoners, that is to say there were 1,167 prisoners more than we could properly accommodate. This is, Sir, in regard to convicts. Of under-trials there were 1,598 over-strengths, so to say. If you add these two figures together, you get a total of considerably more than 2,000. It is a very serious matter when you have got to look after this large excess population in your jails. You are running the risks of health and also risks in the matter of security, and it is only because we have been in such a difficult position as regards over-crowding that we have come to the Legislative Council with this proposal to put up extra accommodation. Mr. Banerji spoke, too, about the release of prisoners—that is, the release of those poor fellows who have suffered for their country. I suppose he referred to the civil disobedience prisoners. Well, Sir, the total number of such prisoners is only 8 in all of our jails, and these 8 are not likely to be released

because they committed heinous crimes under the guise of civil disobedience, and that is the only reason why they have been still retained. As regards releases, we have made certain jail releases—the last one being in January this year, when we released 2,000 prisoners. That is a thing, Sir, which no Government likes to do if it can possibly help. For obvious reasons, it is quite unreasonable to expect our police and magistrates to do their best to run down criminals, arrest them, try them, and convict them, only to find that the Jail Department let them out as they have no room to keep them! That is a thing, Sir, which we are very anxious to avoid.

Rai Bahadur Dr. Haridhan Dutt was very anxious to help us to economise over this matter, and I am very glad to have his views. I had already discussed the matter with him at some length, but find that apparently I failed to convince him. I think, Sir, Dr. Dutt has given Government, and myself in particular, very little credit for giving consideration to this scheme. I have, as a matter of fact, seen the whole of the site to which he has referred, though I do not think that he himself has ever been there. I think that Dr. Dutt was anxious that we should utilize what is known as the Dum Dum Special Jail A, *i.e.*, the old ammunition factory. He wants this factory to be utilized as an extra jail. That is a thing which we went into very carefully, and have considered all its possibilities. But one main objection to that proposal is that it would be very expensive. One can easily imagine that buildings which were put up for manufacturing ammunition are not likely to prove very suitable for keeping convicts inside, and if you took up that site you would have, practically, to rebuild the whole thing; also, you would not be able to house your staff on the spot and they would have to live a long distance away. Thirdly, the surrounding wall, we were assured by our engineers, is at present not of the requisite height for a jail; and that it is built with such inferior materials that it could not be raised to the necessary height without falling down. That would mean that we should have practically to build a new jail. On the other hand, in the site which we have chosen, that is to say one of the blocks of the old British Infantry Barracks, you have got an excellent nucleus to start with—an excellent brick-built two-storied building, which will be the main ward of the jail—and that means a large saving in staff also. As I said before, Sir, my main reason is that we are in a very difficult position in the matter of accommodation for convicts—especially long-term convicts, whom, by the way, we could not put in the district jails, as has been suggested. I, therefore, hope, Sir, that the mover of the amendment will see his way to withdraw his motion.

The motion was, by leave of the House, withdrawn.

The motion of the Hon'ble Nawab K. S. M. Faroqui was then put and agreed to.

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Municipal (Amendment) Bill, 1935.

The Hon'ble Sir Bijoy Prasad Singh Roy introduced a Bill further to amend the Bengal Municipal Act, 1932.

The motion was put and agreed to.

The Secretary then read the short title of the Bill.

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I beg to move that the said Bill be referred to a Select Committee consisting of—

(1) Mr. S. M. Bose,
(2) Khan Bahadur Muhammad Abdul Momin, C.I.E.,
(3) Maulvi Abul Kasem,
(4) Rai Bahadur Satyendra Kumar Das,
(5) Mr. Narendra Kumar Basu,
(6) Mr. C. G. Cooper,
(7) Khan Bahadur Maulvi Emaduddin Ahmed,
(8) Babu Profulla Kumar Guha,
(9) Maulvi Tamizuddin Khan,
(10) Babu Khetter Mohan Ray,
(11) Rai Bahadur Sarat Chandra Bal,
(12) Mr. S. K. Haldar,
(13) Rai Bahadur G. C. Sen,
(14) Mr. P. Banerji, and
(15) the mover.

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

The Select Committee are further instructed to take into consideration the non-official Bills mentioned below, in preparing their report,

with a view to incorporating in this Bill such of the provisions of the non-official Bills as may seem to them to be desirable:—

(1) The Bengal Municipal (Amendment) Bill, 1935, by Mr. P. Banerji, M.L.C.

(2) The Bengal Municipal (Amendment) Bill, 1934, by Rai Bahadur Satyendra Kumar Das, M.L.C.

(3) The Bengal Municipal (Amendment) Bill, 1935, by Rai Bahadur Satyendra Kumar Das, M.L.C.

(4) The Bengal Municipal (Amendment) Bill, 1935, by Rai Bahadur Satyendra Kumar Das, M.L.C.

I do not think I need speak at length in moving this motion. The House is aware that there are certain anomalies in the existing Bengal Municipal Act to which the attention of Government was drawn by officers of Government as well as by some hon'ble members of this House through non-official Bills. An attempt has been made to remove those anomalies in this Bill that I am asking the consent of the House to send it to Select Committee. Besides that certain changes in the franchise qualifications have also been introduced because Government thought that there was a considerable volume of opinion in this House in favour of such a change. Most of these amendments are of a disjointed nature and no one principle runs through this Bill. Most of these changes have been fully explained in the Statement of Object and Reasons. In this view of the matter perhaps the House does not expect me to make a long speech on the subject.

Mr. SHANTI SEKHARESWAR RAY: Sir, one point that I would like to place before the House in connection with the motion of the Hon'ble Minister is this: in the latter part of the motion he suggests that the Select Committee should be further instructed to take into consideration the non-official Bills mentioned by him which have already been referred to different Select Committees. It may be the same Select Committee, but the motion here is for referring a particular Bill to a Select Committee and what the Hon'ble Minister further suggests is that the Bills which have already been referred to different Select Committees are to be taken into consideration by the present Select Committee which he wants to be appointed to consider that Bill; and he asks that in preparing their report, the Select Committee should try to incorporate in this Bill such provisions of the non-official Bills as may seem to them to be desirable. Sir, I speak subject to your ruling and submit that the procedure appears to be incorrect. In the first instance when we have already referred some Bills to Select Committees we cannot——

Mr. PRESIDENT: Mr. Ray, are you raising a point of order?

Mr. SHANTI SEKHARESWAR RAY: Yes, Sir, incidentally.

Mr. PRESIDENT: I do not quite understand what you mean. If you raise a specific point of order, then and then only you can expect a ruling from me.

Mr. SHANTI SEKHARESWAR RAY: Sir, you are always kind. If there is a case for your ruling, I shall expect a ruling from you, sir.

Mr. PRESIDENT: Are you serious about raising a point of order?

Mr. SHANTI SEKHARESWAR RAY: Sir, I shall ask for a ruling if I can make out a case.

Mr. PRESIDENT: Very well.

Mr. SHANTI SEKHARESWAR RAY: Sir, in the first instance, it will be placing the members of the Select Committees which we have already appointed in a very invidious position; for instance, particular members may be interested in particular Bills and they may be able to convince the particular Select Committee to accept their point of view and submit a report of the Select Committee. Well, the same matter is proposed to be referred to this new Select Committee who may come to a different conclusion. I think therefore that there may be an overlapping of work of the five Select Committees ——

Maulvi TAMIZUDDIN KHAN: Is not the personnel the same, Sir?

Mr. SHANTI SEKHARESWAR RAY: If it be suggested that the personnel is the same, then there is no point in referring these four Bills to the Select Committee. The Hon'ble Minister should have suggested to these members that there was no use in referring these Bills to Select Committees but should have invited them to serve on the Select Committee in connection with this Bill and referred these Bills to that Select Committee. However that is a matter between the individual non-official members who have brought before this House these Bills and the Hon'ble Minister. I think, Sir, after I have

pointed out the difficulty, the best thing for me would be to ask for a ruling from you, Sir, whether the procedure adopted by the Chair is correct or not.

Mr. PRESIDENT: I knew that you were determined to be unkind to me. (Laughter.)

Let me tell you that what is being done now will not preclude the Select Committees on the several Bills from making separate reports on the different Bills. Your apprehension is that they are going to make a joint report and you are labouring under that impression. It is not so. They have to make different reports on the different Bills and those reports will, in due course, be presented to the House. So, the House will not be asked to consider a joint report. What the Hon'ble Minister is asking the Select Committee on this Bill to do is to incorporate in the Government Bill any of the provisions of the other non-official Bills which the Select Committee may consider desirable. The House may accept any one of these Bills or reject any one of them and members are in no way prejudiced.

Mr. SHANTI SHEKHARESWAR RAY: My submission is that these four Bills are not before the House just now and so they cannot form the subject of discussion at the present moment; but what the Hon'ble Minister suggests is——

Mr. PRESIDENT: Mr. Ray, you should not forget that the House has already accepted the principles of those Bills. Those principles may not be under discussion now but the House has not only taken them into cognizance but has actually accepted them. The only point at issue is whether the Select Committee should be instructed to incorporate them in the Government Bill if they so desire.

Mr. SHANTI SHEKHARESWAR RAY: But, Sir, can we go into the provisions of these Bills? If not, how can this motion be admissible which asks that these Bills be referred to the Select Committee?

Mr. PRESIDENT: We are not discussing details now, so that question does not arise.

I do not think you have been able to show that the Hon'ble Minister's motion is infringing any of our rules. I may say that it has been very rightly admitted by me as I did not foresee any difficulty whatsoever.

Mr. SHANTI SHEKHARESWAR RAY: Sir, if that is your ruling, it finishes the matter.

The following motion was then put and agreed to:—

That the Bengal Municipal (Amendment) Bill, 1935, be referred to a Select Committee consisting of—

(1) Mr. S. M. Bose,

(2) Khan Bahadur Muhammad Abdul Momin, C.I.E.,

(3) Maulvi Abul Kasem,

(4) Rai Bahadur Satyendra Kumar Das,

(5) Mr. Narendra Kumar Basu,

(6) Mr. C. G. Cooper,

(7) Khan Bahadur Maulvi Emaduddin Ahmed,

(8) Babu Profulla Kumar Guha,

(9) Maulvi Tamizuddin Khan,

(10) Babu Khetter Mohan Ray,

(11) Rai Bahadur Sarat Chandra Bal,

(12) Mr. P. Banerji,

(13) Mr. S. K. Haldar,

(14) Rai Bahadur G. C. Sen, and

(15) the mover.

with instruction to submit their report as soon as possible and that the number of members whose presence shall be necessary to constitute a quorum shall be five.

The Select Committee are further instructed to take into consideration the non-official Bills mentioned below, in preparing their report, with a view to incorporating in this Bill such of the provisions of the non-official Bills as may seem to them to be desirable:—

(1) The Bengal Municipal (Amendment) Bill, 1935, by Mr. P. Banerji, M.L.C.

(2) The Bengal Municipal (Amendment) Bill, 1934, by Rai Bahadur Satyendra Kumar Das, M.L.C.

(3) The Bengal Municipal (Amendment) Bill, 1935, by Rai Bahadur Satyendra Kumar Das, M.L.C.

(4) The Bengal Municipal (Amendment) Bill, 1935, by Rai Bahadur Satyendra Kumar Das, M.L.C.

The Bengal Court of Wards (Amendment) Bill, 1935.

The Hon'ble Sir BROJENDRA LAL MITTER: I beg to present the Report of the Select Committee on the Bengal Court of Wards (Amendment) Bill, 1935.

I beg to move that the said Bill, as reported on by the Select Committee, be taken into consideration.

Sir, I had no intention of making a long speech in commending this motion to the House; but from the number of amendments tabled, it appears that some members have failed to appreciate the principles of the Bill which were accepted by this House when the Bill was referred to the Select Committee. With your leave, Sir, I shall inform the House what the principles are. They are mainly three: The first principle is that the Court of Wards should be given some breathing time to work out its scheme of administration without being hampered or defeated by precipitate action of individual creditors. The second principle is that the Court of Wards should preserve the estate for the benefit of all the creditors collectively, and during its administration all should get the same interest—4½ per cent.—for five years and full interest thereafter for ten years. The third principle of the Bill is that in case of the release of an estate by the Court of Wards, control should not be transferred to the proprietor till certain dues are satisfied. These are the three principles of the Bill which have been accepted by the House. The Select Committee made some alterations with regard to what was described as a moratorium at the last debate; the proposal was for five years and ten years; the Select Committee has cut down the period to four and seven years. Then as regards the transfer of control, in the case of release the Select Committee has made an alteration and it is necessary that I should explain what that alteration is.

Under the existing law when the Court of Wards releases an estate, it transfers the control to the proprietor. During the last debate I think it was Mr. Thompson who suggested that that was not a satisfactory state of things and on that occasion I gave an undertaking that as regards the transfer of control from the Court of Wards either to the proprietor or some other authority the matter could be discussed in Select Committee. The matter was discussed in Select Committee and Government put forward its own scheme. That scheme is this: That when the Court of Wards decides to release an estate on the ground that it cannot save that estate and it is no use retaining it under its management, in that event it would give an opportunity to all the creditors and the proprietor to come together and make some arrangement if possible. If they did come to an arrangement, that is if all the creditors and the proprietor of the estate came to an arrangement, in that case the Court of Wards would release the estate to the proprietor

subject of course to the arrangement being a valid arrangement under the law. But if they did not come to any arrangement, what was to happen? Under the existing law the estate has to be released to the proprietor. That course is attended with two serious risks. The first risk is that the proprietor, finding that he was on a sinking boat, might be tempted to waste the estate for his own benefit. He might waste in this way. He may, as soon as he gets possession of the estate from the Court of Wards, create permanent interests by taking large *salamis*, thereby reducing the security of the creditors—that is one serious risk.

The second serious risk is that after the estate is released to the proprietor, any individual creditor may sell up the estate in execution of a decree for his dues and many other creditors, who are not secured, may be defeated altogether. In view of these risks it was considered that the control should be transferred from the Courts of Wards to some authority so as to secure that none of the creditors were defeated and all got their dues proportionately if the estate was not sufficient to pay them all in full. So long as the Court of Wards is in charge, there is no such risk, but when the Court of Wards releases the estate, the risks come into existence. Therefore, Government proposed that if the creditors and the proprietor failed to come to an arrangement, control over the estate should be transferred to the Civil Court so that the estate might be administered by the Civil Court in the interests of everybody concerned. And in that scheme of transfer of control from the Court of Wards to the Civil Court the device which is well known in England of appointing trustees has been adopted, that is to say, the creditors at a meeting will select trustees and the Court of Wards instead of releasing the estate to the proprietor will transfer the estate to the trustees, and, upon that, the estate will vest in the trustees and the trustees will administer the estate under the direction of the Civil Court. By this device the risks which I mentioned are avoided and everyone stands to get his dues. I had a talk with my old and learned friend Mr. Page on this clause. I am sorry he was not a member of this Council in time to assist us in the Select Committee. Nevertheless, I welcome him in this House and his presence here is a decided acquisition to the strength of the House. I had a talk with him, and I gathered that he was not particularly happy about this specific scheme which we had put forward. As regards that, I can assure the House that there is hardly any likelihood of our scheme coming into operation in respect of any estate in charge of the Court of Wards. The Court of Wards does not lightheartedly release an estate which it undertook to preserve for the benefit of the creditors and the proprietor. So there is hardly any likelihood of that particular scheme coming into operation. I am, however, quite prepared to undertake this; that if my friend Mr. Page or any other hon'ble member of the House can devise a better scheme which will secure the interest of everybody concerned, I shall

not be slow in coming to this House with an appropriate amending Bill. So far for that scheme. That is the second important change which the Select Committee made. The third important change is with regard to the extension of the period of limitation for suits and applications in view of the moratorium. It is this: if for a certain period a creditor cannot sue or execute his decree, he may be prejudiced. It may be that at the end of that period his claim would be barred or the period for application would be barred. To meet that contingency the Select Committee extended the period of limitation as appears in the report.

These are the main changes which have been made by the Select Committee. A number of drafting changes have also been made which I need not detail at the moment. I do not think it is necessary at this stage to anticipate any arguments which may be adduced in support of any of the amendments. I shall get an opportunity of answering them when the amendments are moved. I move my motion.

Mr. W. W. K. PAGE: I beg to move that the Bill be recommitted.

In moving that the Bill be recommitted to the Select Committee I do so with regret, because I am entirely in agreement with the principles which the Hon'ble Member has so clearly enunciated. The Court of Wards Amendment Bill has been framed mainly in the interest of the creditors. From such experience as I have had of the working of the Court of Wards I take the view, rightly or wrongly, that the time is fully ripe for a much more comprehensive amendment of this Act and that there is much in the method of administration of the Court of Wards which in the interests of the wards themselves calls for comment. To my mind, the present system will never be really successful in protecting the proper interests of the wards until the Court of Wards also is brought more directly and more effectively under the control of the Courts of Justice. But this is not the appropriate time to speak at any length on that aspect of the Bill. The point with which I am immediately concerned is the section to which my hon'ble friend Sir B. L. Mitter referred: it is intended to introduce it as clause 3(*1*) to section 23 of the Act. I do not want to waste the time of the House by pointing out that the place of insertion in the Act is unhappy. It is a very minor point, but it does seem to be introduced most inappropriately. There are two points in the clause as drafted which make it to my mind impossible to accept it as a piece of satisfactory legislation. Hon'ble members will appreciate that the scheme which is proposed is that if the Court of Wards comes to the conclusion that it cannot with any reasonable hope of success disentangle an estate from its debts, it is to give notice of its intention to release it. The Hon'ble Minister has assured us that there are no estates in the hands of the Court of Wards at present which are likely to be affected by this clause. But what is the fact? The fact is that quite recently an estate has been released for

this very reason that the Court of Wards was unable to see any prospect of success in saving that estate. It is to be remembered that the principle of administration in the future will be that the Court of Wards will release an estate if it has reasonable grounds of believing that the estate cannot be saved. We can hardly entertain the argument that this clause is very unlikely to be applied. It seems to me that this Council should hardly, if it is satisfied that this piece of legislation is unsatisfactory, allow it to go forth without further consideration.

There are two points to which I should like to draw the attention of this House. If the proprietor is unable to come to some arrangement with his creditors, his estate is to be vested in trustees. That sounds an admirable plan, but I think it is quite probable that other hon'ble members have the same experience as myself. They may have been asked to be trustees of such estates in order to save them. I think it is very doubtful if any hon'ble member's answer would be different from that which I give. For no consideration will I undertake it. Whom will you find who would be willing to undertake this immense responsibility and who are they who are fit to undertake this task? Most of these estates are not within the original jurisdiction of the High Court of Calcutta; the majority of them are in the mufassal. It will be impossible to find, among the inhabitants of the mufassal, people who are fit to undertake the duties of the trustees, excepting the members of my own profession. I have the greatest admiration for my own profession, but I am far from being sure they are fit for the management of zemindaries. Quite apart from the capability of the members of my profession to undertake this work, what will be the effect on the estate itself? The effect will be to bring the whole of the estate, the state which is being handed over from the management of the Court of Wards, to untried men, who know nothing of the management of revenues or of the management of estates. If it had been a point of practicability only, it would have been easy to meet that by an amendment. The amendment that I would have proposed would have been this: that until the estate was realised by sale, so long it should remain under the management of the Court of Wards, leaving to the trustees the duty of the administration of the estate and the distribution of the proceeds on realisation. Had that been the only objection to the clause I think it is obvious that it could easily have been met by an amendment to the effect that pending the realisation of the estate, the management of the estate could remain with the Court of Wards. But there is a much more serious objection, and that is this. It seems to me that those who prepared this clause forgot entirely the existence of the law of insolvency. It is true that hon'ble members will find that under clause 5 the Civil Court shall have all the powers given by the law of insolvency. That, Sir, is one of the clauses which must have been drafted with a view to enable members of my profession to increase their practice. Be that as it may, it does not obviate the point I am making that the draftsman forgot the

insolvency law. What happens when a proprietor's estate is released? The protection which he has previously had is withdrawn. It is true that the clause purports to extend that protection, so far as his person is concerned, but the protection which his property has enjoyed is withdrawn. There is going to be a meeting of creditors and they are going to elect trustees. No provision whatsoever is made in the clause giving the constitution of that scheme any statutory effect. Under the company law and procedure the law gives effect to that, and it says that although there may be a dissenting minority, nevertheless this scheme, if and when approved, shall be binding on all creditors. There is no such provision in this clause. What is to happen? Is it possible that every creditor would agree to the appointment of trustees and administration of the estate by them? There are always creditors who think that their individual interests will be better served by trying to stay outside any scheme which is ever propounded. Any man who has had any experience of endeavouring to wind up an estate by means of scheme, will agree with me in that statement. If that be so, what is to happen? The creditor, who will not accept this scheme, as an alternative has the Courts open to him, whether it be the Courts in Calcutta or the Courts in the mufassal. He has the High Court in Calcutta where action can be taken under the Presidency Towns Insolvency Act, and in the mufassal he has the District Courts where he can take action under the Provincial Insolvency Act.

The proprietor has also the same resorts at his disposal. Assuming that the proprietor does not like the scheme which the trustees and the creditors propound, he has two alternatives only: either to agree and be quite certain that his property is gone for ever or to disagree and endeavour to save himself by some other road. What other roads are open to him if he does not agree? He can only resort to the law of insolvency. He may apply for insolvency and be adjudicated an insolvent. Similarly, any creditor who does not accept a scheme may take the same course, because I think you will all agree that without the execution of any decree, if there is transfer of the whole property of a proprietor to trustees, there is sufficient ground for an application in insolvency. And what if that eventuality happens? If either the proprietor or one of his creditors takes proceedings in insolvency and the adjudication is made, what becomes of the scheme? The estate which has vested in the trustees, under the statutory provisions of the Insolvency Act immediately vests in the Official Assignee in Calcutta, and in the Official Receiver in the mufassal. And, automatically, this scheme which is proposed in this clause comes to an end. So, as the clause is drafted at present, it is impossible to envisage any case in which it will be of the least advantage. For myself, Sir, I find it impossible to redraft the clause in such a manner as to present it in the shape of an amendment. For these reasons I would ask the House to recommit the

Bill to the Select Committee with the object of giving it better consideration than it has hitherto had and not with the object of evading the principle which is embodied therein. I am all in favour of the principle, but I want it to be made effective and a real safeguard to all the creditors. If my learned friend the Minister in charge of the Bill can give me an assurance that he will meet my objections, first as regards the practicability of the scheme with regard to the trustees by agreeing that the estate should remain in the management of the Court of Wards, and, secondly, by agreeing that there must be a provision which will oust from operation the provisions of the law of insolvency, then I would be glad enough not to press my motion. But, at the same time I am bound to ask the House as to which is the more satisfactory course: to ensure that the legislation which we put on the roll should be effective legislation, or knowingly to allow a faulty piece of legislation to be put on the roll on the assurance—and I have no doubt of that assurance—that it would be corrected at the next opportunity? It seems to me that that is a very unscholarly way of proceeding. It would be much better, if we were to legislate having a particular point in view, to legislate effectively rather than ineffectively on the footing that we shall be able to correct our errors at some future date.

Babu JATINDRA NATH BASU: Sir, I oppose the motion of Mr. Page.

The Hon'ble Sir BROJENDRA LAL MITTER: May I say one word before my friend Mr. Basu speaks? I am prepared to accept amendment No. 52 which has been tabled by him, and I would accordingly request him to make his remarks keeping that in view.

Babu JATINDRA NATH BASU: Sir, Mr. Page has admitted——

Mr. P. BANERJI: On a point of order, Sir. Mr. Page towards the end of his speech has given an indication that, on certain conditions, he would be inclined to withdraw his motion. I, too, have tabled an identical motion. May I know, Sir, what will be the fate of my motion if he were to withdraw his?

Mr. PRESIDENT: You can object to that motion being withdrawn, but it is for the House to decide whether it should be withdrawn or not.

Babu JATINDRA NATH BASU: Sir, Mr. Page has admitted that the amendments to the present Court of Wards Act, which have been placed before the House in this Bill by the Government, are such that

they may be said to be desirable; but he is of opinion that a more comprehensive alteration of the law relating to the Court of Wards is necessary, and until the entire Act is altered, it is not much use proceeding with the legislation now before the House. The legislation that is now before the House has been put forward with a view to meet the difficulties that have arisen in the matter of the administration of estates taken over by the Court of Wards. Mr. Page indicated that he would like to see the operations of the Court of Wards brought more directly under the control of the Civil Courts. That, Sir, is a fundamental matter, and would, probably, not only require an amended Court of Wards Act but probably a repeal of the Act altogether. Sir, the revenue system of this province was laid down from the commencement of British connection with this province in such a manner that it was found necessary in very early times more than a century ago to have a legislative measure of the kind embodied in the Court of Wards Act. There was originally a Regulation which with subsequent amendments has now taken the shape of the present Court of Wards Act. It is not only from about the commencement of British connection that this system which the Court of Wards operates has been prevalent in this country. The system has been prevalent in this province for over a thousand years. When the Muhammadan connection commenced in the early thirteenth century, the system was there. Those who controlled public affairs from the thirteenth to the middle of the eighteenth century adopted the system that had existed prior thereto and there was practically no interference with that system during that time. When the British connection commenced, that system was adopted. The Court of Wards was intended to ensure that the estates from which the Government for the time being drew its revenues should be so administered that there should be no difficulty in the matter of payment of revenue to Government by any estate. That was one of the principal objects of the Court of Wards, Sir. Therefore, the alteration that Mr. Page suggests will mean such a drastic alteration as will probably lead to a repeal of the Court of Wards Act. Then Mr. Page referred to the appointment of trustees and the creation of a trust for the administration of estates after their release by the Court. He has also referred to the difficulty that there may be, in finding suitable trustees. Mr. Page must, with his wide experience, be aware that the trustees themselves, though they control the affairs of an estate, do not manage the estate themselves. The management is done as it is done by the Court of Wards through managers and through local officials. Some of them are highly trained officials used to the management of *zemindari* estates. Not only the people of this country but the concerns like the Midnapore Zemindari Company with their offices in Calcutta manage *zemindari* property in that way. Some rich, large indigo concerns in the early days of the British connection and others, including members of the Board of Directors of the East India Company, used to

have large indigo estates in this country, and they used to have the management done by local Managers, though the Directors themselves were in the City of London. Sir, so far as the management is concerned, there should be no difficulty. The trustees will control and there should be no difficulty in finding trustees. Even now there are several estates which have trustees, administrators and others who control the management and carry out the scheme laid down in the document or order creating the trust or by the will by which a testator might create a trust; so, that is done. A person need not necessarily be a trained *zemindari* Manager himself in order to assume the office of an executor of a big landholder or *zemindar*. It has happened on many occasions that a big *zemindar* having property in several districts has appointed his legal advisers as executors and trustees, and the management of the estate has gone on without any trouble; it has gone on in like manner everywhere else in the world. Sir, the business of estate management is also gradually becoming a specialised business. We have now trained land agents in Calcutta who take charge of properties, manage them, look after the interests of the proprietors and carry out the directions that are given to them. There should be no difficulty, therefore, if a trust is created to see that the trustees properly carry on their work, nor should there be any difficulty in finding trustees.

Sir, Mr. Page thinks that until the estate is actually released into the hands of the proprietors, it should continue to be in the hands of the Court of Wards; but if the Court of Wards finds that the estate cannot be freed from all liabilities within a reasonable period of time, the Court of Wards cannot continue to be a sort of permanent trustee for the proprietor. The Court of Wards takes over estates encumbered with debts—not only the estate of an infant or of a lunatic or of a *purdanashin* lady, but it also takes over the estate of a person who has on his own application been declared to be a disqualified proprietor. The Court of Wards on receipt of an application finds out whether there is any reasonable chance of the debts being paid off and the estate being cleared within a reasonable time and then it takes over the estate. After taking it over, they may find that the statement which the applicants have made to the Court of Wards before the estate was taken over is not a correct statement and the affairs of the estate are in such condition that it may not be possible to clear the estate of the debts within a reasonable time; then the Court of Wards thinks of releasing the estate. When the Court of Wards thinks of releasing an estate and making it over to the proprietor, a great many difficulties arise. One of the difficulties is that if the estate is encumbered with debts, not only secured but unsecured, what happens is that the creditor may go and attach the income of the estate, so that it may be difficult even to find the money to manage the estate because it is after all from the income of the estate that the expenses of management are derived. So

if immediately on release a creditor goes and attaches all the income, what happens? Sir, it will hurt the interests not only of the proprietor but of all the creditors including the secured creditor because under the law a secured creditor, unless he is a mortgagee in possession, does not realise the income of the property. The income of the property is realised for him, only when there is an action on the basis of the mortgage deed and there is an order of the Civil Court dealing with the matter, appointing a receiver of the rents and profits of the property, which is the subject-matter of the mortgage. But if there is no suit, then the unsecured creditors may go and avail of the income in the meanwhile. It has happened in the past that one particular creditor who has been more alert than others has somehow managed to obtain a decree within a very short time, to attach the property and get hold of that property himself, and that to the prejudice of the general body of creditors and of the secured creditors as well. That is the state of things which should be avoided, and I think the Government has done well in bringing forward an amendment which will stop that kind of scramble.

Sir, Mr. Page has referred to the insolvency law, and in that connection he has referred to sub-clause (5) of clause 3 which is set out as an amendment in clause 12 of this amending Bill. It invests the Civil Court with certain powers including the powers under the insolvency law.

(The member having reached the time-limit was allowed to finish his remarks.)

Sir, the insolvency law lays down a particular procedure. Creditors are called upon to file their claims, the claims are adjudicated upon by the Official Assignee or by the Official Receiver, as the case may be. If a creditor does not come forward to have his claim admitted, a list of claims is prepared without him, and whenever assets come to the hands of the Official Assignee or Receiver, a dividend is declared; when the first assets come, the first dividend is declared, and those who are on the list of those that have proved their claims share in the distribution of dividends; those who have been dilatory and have not come forward to prove their claims do not share in that distribution, but they may share later on in the second dividend when it is declared if they prove their claims later. That is a part of the procedure which enables the Court which is dealing with a matter like this to effect the administration and distribution of assets. I do not see what harm there is in adopting that procedure. Mr. Page says that as soon as there is an insolvency, all trusts and other things will vanish. I think Mr. Page knows that in insolvency, even when there is a voluntary transfer of property and it is required to be vacated, there will have to be proceedings for such vacation. The mere fact of insolvency will not vacate, and in those proceedings if the Court is satisfied that the trust was one

which ought not to be vacated, it will not be vacated. The power is left to the Court in such cases. Upon these grounds, Sir, I think that the objections put forward by Mr. Page are such that they do not really go to the root of the question which is before the House, viz., consideration of the amendments which have been introduced by this Bill. I think the amendments are in order and do not effect such a drastic change that they cannot be considered by this House without a thorough recasting of the whole Act itself.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, in the first place, if I may venture to do so, I would congratulate Mr. Page, a veteran speaker and lawyer, for his maiden speech. I agree with him that the Bill should be recommitted to the Select Committee; although I do not agree with a lot of what Mr. Page has said as regards the principles enunciated in the Bill. The Hon'ble Member in charge of the Bill has said that we have not perhaps appreciated the three main principles underlying this Bill. Sir, I may tell him that because we realise the full import of the principles embodied in the Bill that we are opposed to the Bill entirely. So far as the first principle is concerned, viz., the giving to the Court of Wards some respite to set its house in order, I may say that that is the least objectionable part of this Bill, and therein we may perhaps agree, although we cannot agree that it ought to take 5, 10 or 15 years for the Court of Wards to put its house in order. A much shorter time ought to do. That point will arise later on, and I do not like to go further than that now.

Sir, the second principle, that it is the duty of the Court of Wards in charge of the estate to preserve it for the benefit of the creditors, I think, is not sound. The estate, when it is assumed charge of by the Court of Wards, is taken over entirely for the benefit of the wards; and to act for the benefit of the wards it is necessary that the debts of the creditors should be settled so that when the Court of Wards is in a position to release the estate, it makes it over free from encumbrances. So far, it is perfectly all right; but beyond that, to show any interest for the creditors to enable them to realise their dues and to give them more facilities of doing so by the Court of Wards than when the estate was in the hands of the proprietor himself, I do not think, is a good principle. Sir, the third principle which the Hon'ble Member has introduced in the Bill in the Select Committee was not in the original Bill as introduced in the Legislative Council; and on that point at a later stage I would ask for a ruling, Sir, whether at the Select Committee stage a fundamental change in the principles of the Bill can be considered which did not appear in the Bill as originally introduced. That, Sir, is perhaps one of the most important reasons why the Bill should be recommitted if not for anything else to obtain public opinion. Public opinion was asked for on the Bill which was introduced in the Council. Since then it has undergone a change by

the addition of principles which the Bill did not contain; and it is only right and fair that all those who are interested in the matter should have a say, and we should know their opinion before the Bill is rushed through the Council. Mr. Page has very ably demonstrated the serious difficulties which are in the proposed amendments.

Mr. PRESIDENT: Khan Bahadur, would you resume your remarks after lunch?

Khan Bahadur MUHAMMAD ABDUL MOMIN: Very well, Sir.

(At this stage the Council was adjourned for lunch.)

(After Adjournment.)

Khan Bahadur MUHAMMAD ABDUL MOMIN: Before the adjournment, Sir, I was referring to Mr. J. N. Basu's speech, and was criticising that it would not be possible for the trustees to manage the estates made over to them. When a specialised body like the Court of Wards who have resources for proper supervision and control and who have officers, well experienced in the management of estates, are not successful in properly managing them or in paying out the debts of the creditors, it is hardly conceivable that a trustee under a Civil Court or a Receiver will be able to do better and to manage the estate more efficiently than the Court of Wards. The purpose of the Hon'ble Member, therefore, to make over an estate to the creditors, in order to safeguard both the proprietors and the creditors, will not be served. As a matter of fact, there is no justification to make over the property to the creditors themselves. My serious objection to the inclusion of the new amendment to clause 12 is that it transgresses all laws of equity and justice. Proprietors hand over their estates because they are in difficulties for protection against creditors. The Court of Wards are unable to manage the estates, and, therefore, instead of making over the estates to their proprietors, they will hand them over to the creditors against whom the proprietors want protection. That is a scheme which no right-minded man can approve of. It has been said that occasions for enforcing this clause will be very few, where the Court of Wards will not be able to liquidate the property, and will hand it over to the creditors. If you go through the report on the management of estates by the Court of Wards, you will find that out of 124 estates which are at present under its control, about one-half, if not more, are such in which the debts are not only not being reduced, but in which the debts are either stationary or are on the increase. What will, therefore, happen after some years is that the Court will find that it is not possible to reduce the debts, neither will they undertake the responsibility of selling the estates and paying off the creditors or of returning the estates to the proprietors. They will take advantage of this clause and hand over the estates to the creditors themselves,

with the result that the estates will all be sold and the proprietors will all be ruined. Therefore, I consider that this clause without safeguards is not a proper clause to be introduced in this Bill. When I spoke on the amendment to section 5, I gave my reasons for opposing the section at the time of the introduction of the Bill. The only thing I should now like to mention is that if the intention to amend this Act is to give a respite to the Court of Wards and to set its house in order, Government is quite justified; on the other hand, if the idea is to protect a certain number of individuals against another set of individuals, for no fault of the latter, I think this amendment on principle is objectionable. Going through the last year's report, I find that out of twenty new estates, as many as eight have been taken in charge under section 6 (*e*), that is, not because the proprietors are minors, widows or imbeciles, but because they are in debt owing to their extravagance and incompetence. In the case of these estates, taken over under section 6 (*e*), there is no justification for extending the provision of section 5A to them.

Sir, the Hon'ble Member has asked whether we can suggest anything else to improve the Bill. I would refer him to the United Provinces Act which has provided for the management of the estates in a more efficient and sensible way than what we are doing here under our Act. The real trouble is that the *zemindari* system, as inaugurated by the Permanent Settlement, has failed in Bengal, and it is futile to try to revise the worm-eaten structure by encroaching upon the rights of others, although I do not say that an attempt should not be made in that direction.

The reason why the Court of Wards has been experiencing difficulties is the enormity of the work which the Court has got to do now. Sir, it is physically impossible for one Member of the Board of Revenue, who has got other miscellaneous work to do as well, to pay full attention, or to pay any attention at all to the management of as many as 124 estates, all of which are badly indebted, badly managed and require the closest attention. Therefore, if you want that the estates under the Court of Wards should be properly managed, the Act must be radically changed. We must provide a better machinery under the Board of Revenue to enable it to look after these estates more thoroughly and more efficiently than what is physically possible to do under present conditions. It is no use amending the Act or giving statutory protection unless there is provision for a better and more efficient supervision and a larger number of staff to make a real effort to see whether it is possible to save the encumbered estates. Many of the estates are taken over for management without proper consideration. It is not possible to make a more thorough investigation into the affairs of these estates before they are taken over than is done at present, and this is the reason why after the estates are taken over the Court of Wards find that the amount of the debt which was originally stated by the

proprietor is very much less than what it is. After a time they find it very difficult to prepare a scheme within which the estate can be free from encumbrances in a reasonable time. If clause 12 is passed into law, I can visualise what will happen within the next ten years. All these big estates which the Board take over charge for better management and for giving protection to the proprietors will be handed over to the creditor because the Court of Wards will not be able to free the estates from their encumbrances. All these estates will then automatically go from the hands of the proprietors to those of money-lenders. It has been said that if some clause like clause 5A is not made, there will be a regular scramble among the creditors. Some creditors will probably be able to attach the estates to the prejudice of other creditors. This is not correct. As a matter of fact, no estate or a very few if any at all have got unsecured debt. Perhaps the estates of Kasimbazar has got much unsecured debt, but in every other case I think the debts are all secured by mortgages and other documents, and it does not matter if the estates are released to the proprietors so far as the creditors are concerned, because they can always go to the Civil Court and attach and sell the property.

(Here the member reached his time-limit, but was allowed to speak for another two minutes.)

Why, therefore, should the Court of Wards take the work in their hands to expedite the ruin of these proprietors? It is quite possible that after the estates are released, the proprietor would go and interview the creditors and seek their mercy and make a long-term instalment and in time they may be able to pay off their debts. By this section why force these estates into the hands of the creditors and force them to ruin? As an additional reason for recommitment is that this sort of piecemeal alteration of the Court of Wards Act is undesirable. This Act requires wholesale recasting, and I would suggest that the Hon'ble Member should withdraw this Bill and bring in a new Bill embodying other salutary provisions in it.

Mr. S. M. BOSE: I regret I have to oppose the amendment of Mr. Page whom we all congratulate on his able maiden speech. I further regret that Mr. Page, should join the ranks of Mr. P. Banerji. So far as I am aware, in every Bill that has come before the House, Mr. P. Banerji has put in a motion for circulation or recommittal——

Mr. SHANTI SHEKHARESWAR RAY: Sir, is it permissible for a member to cast reflections on another member of the House?

Mr. PRESIDENT: That is no reflection.

Mr. S. M. BOSE: Mr. Page fell foul of clause 12 (3) of the Bill. He has in his speech tried to show that this new clause is absolutely wrong, incorrect, and so forth. He has tried to show as to how this clause 12 (3) is hopelessly wrong and should be altered and amended.

The proper remedy for that is to move amendments on the floor of the House. I find in the order paper there are no less than 46 amendments on this particular clause (amendments 30 to 75) and the European Group can choose any one of these to support. For instance, amendment 30 proposes the total deletion of clause (*ii*). If Mr. Page is correct, his group might well support it, and it is an extraordinary fact that not one of his group has put in any amendment with regard to this particular clause. Amendments 30 to 75—I believe I am right—deal with this particular clause, and not one of these has been tabled by Mr. Page or any one of his group. So I fail to understand if he objected to this clause, why did he not put in an amendment? He has gone through this clause in detail, and I submit all this can be done on the floor of the House. If he does not approve of any of these amendments (30 to 75), I suppose he can, with your permission, put in a short-notice amendment. I see no reason for recommittal of the Bill, when we are in possession of the whole Bill. If the amendments put in do not cover his case, he might with your permission put in short-notice amendments.

Then I come to the speech of Khan Bahadur Abdul Momin. He is opposed to the Bill entirely. He goes the whole hog: he objects faintly, and not very strongly, to the principle of moratorium. I am really surprised at this. He is, I believe, one of the really staunch supporters of the Rural Indebtedness Relief Bill. What do we find there? A sort of moratorium extending up to 20 years for the relief of agricultural debtors; but here he objects to this Bill because it is meant for the relief of the indebted *zemindars*: One law for the agriculturists and another law for the hard-pressed, poor and involved *zemindars* who have to run and beg the Court of Wards to take charge of their estates. I really do not understand this attitude. If we are really going to give relief to the people who are hard-up, why does Khan Bahadur Abdul Momin say that relief should only be given to a particular class of persons? Further, he seems to be under the wrong impression that the object of the Bill is to give relief to the creditors. Nothing of the kind. In the Statement of Objects and Reasons to this Bill it is said that the main object of the amendments is to strengthen the hands of the Court against unsecured creditors and to give the Court of Wards better facilities for guarding the true interests not only of the wards themselves but also of all the creditors as opposed to those few creditors who take action in a Civil Court. So there it is clearly put that the main object of the Bill is the relief of the indebted *zemindar* and not of unsecured creditors. It is not at all for the relief of the creditors alone. On the contrary, he is bound to wait at least for four years. So he has really no relief for four years. It is taking away his rights and it is in no way adding to his rights.

Khan Bahadur Abdul Momin spoke of circulating the Bill for public opinion. That is indeed amusing. We did try, when the Rural

Indebtedness Relief Bill was introduced, to get it circulated for public opinion, and I believe the Khan Bahadur was one of the strongest opponents of circulating that for public opinion. According to him, he is not opposed to the proposal in this Bill, but I have reason to think that he is really opposed to it. Now he is talking of circulating this Bill for public opinion. Then Khan Bahadur has suggested that a certain portion of the Bill is *ultra vires*, against the principle accepted by the House, and he has said that when the proper time comes he will make a submission to you. At the very outset I have to submit that he is entirely wrong. When the Bill was introduced Mr. Thompson made a suggestion about handing over the estate to trustees and the Hon'ble Member, so far as I remember, gave an assurance that the Bill will deal with the suggestion. The Bill, as accepted by us, does contemplate giving over the estates when the Court of Wards find it unprofitable to keep them any longer. The whole point is when the Court of Wards decide to give up an estate; should they give it up for the indebted proprietor to sell and alienate it and run through it to the detriment of creditors, or should it be given up to the management of the Law Court? If I may say so, the Select Committee has properly decided that when the Court of Wards decides to release an estate, it should not give it up to the proprietor, but to the Court. That is the sum and substance of the new clause (3). I therefore think it is entirely *intra vires* with the principle of this Bill and, therefore, I oppose the amendment.

Mr. J. B. ROSS: I rise to support the amendment now before the House. My reason for doing so is unfortunately due to the fact that the two amendments which I have submitted were disallowed, and as this is the only opportunity which I may have to put my case before the House. My reasons for doing so differ from those of Mr. Page and are put forward in the interest of subordinate proprietors under the Court of Wards Estates, for instance, of coal mines. I represent the mining industry in this House and this industry is greatly concerned at the serious threat which this Bill constitutes towards their existence under certain conditions. I have found some difficulty in making my point clear to some of the Government members concerned, and I should like, therefore, to take the matter up step by step in order that the House may understand the point which I desire to make. So far as the estate under the Court of Wards are concerned where the Court of Wards is the ultimate landlord nothing arises, and I am not concerned, but I am concerned where the Court of Wards holds under a superior landlord and I hold under it. In that case I pay my royalties regularly when they are due to the Court of Wards and the Court of Wards under proposed clause 14 is bound to apply all moneys in its hands in payment of debts in the rotation prescribed in which the payments of rents, royalties and other demands of the superior landlord

occupies the first place in class II and the fourth place in the whole category. If the Court of Wards have the money to satisfy the first three categories only and the superior landlord cannot be paid, I have no doubt that with the best will in the world the Court of Wards cannot, without funds, overcome that difficulty. Sir, the usual mining leases contain a clause under which if royalties are not paid interest runs till payment at 12 per cent. per annum, and in these day of superabundance of money it is a very good investment for a superior landlord to allow outstanding royalties to run at 12 per cent. to the nearest point which is safe having regard to the period of limitation. In consequence, it is quite conceivable that owing to the inability of the Court of Wards to meet the royalties due to the superior landlord from time to time a substantial sum may fall due. Now, Sir, in discussing this matter with Government, I was advised that if a suit be brought by a superior landlord subordinate interests may be parties to the suit and they will be entitled to satisfy their claims by deducting the amount from the payment due immediately to the landlord, *i.e.*, the Court of Wards. That is a very nice position to have to face. There is a probable five years' accumulation of defaults on the part of the Court of Wards, which may be anything from Rs. 5 to Rs. 15 lakhs. If I have not got the money to meet this claim, the landlord executes his decree against the property because all mining leases contain a clause charging the property for payment of royalties, and if the landlord executes his decree and I am not able to raise money, my property is sold, with this Bill in existence, subject to the interest of the Court of Wards. I am deprived of everything that I possess for no default of mine, and although I had carried out my obligations to the letter. That does not seem to be the intention of Government, but nevertheless it is there. It might be argued that I am not any the worse off than I would be under conditions as they are to-day. But I am worse off to this extent that if there is an accumulation of royalties unpaid and a decree issues, I have the right under normal conditions to sue my superior landlord and execute a decree which I may obtain against him and all his properties. And on the strength of that I can borrow sufficient money to pay the amount due to the superior landlord and so protect my interest. But what happens here? Under this Bill, I know that I have a right to pay and save my property, but in exercising that right I am forcibly placed in the position of a creditor of the Court of Wards and I am compelled to lend them money for a minimum of four years, and may be for a maximum of eleven years, which is not at all what is intended in the Bill.

There is another matter arising out of this: that is as regards estates which are not at present in the hands of the Court of Wards. If this Bill becomes law, it is an invitation to certain impecunious *zemindars* with high ideas of living to go on receiving from all the tenants holding mining leases under them royalties which may

accumulate and reach the figure of several lakhs within a period of five and a half years, *i.e.*, before the limitation period occurs and begins to operate. When the *zemindar* begins to find that the pressure is too great for him, he, not having paid his landlord, comes to the Court of Wards for assistance to save himself from ruin, in which case the tenant will again be forced into the position of being compelled to finance the *zemindar* because of the operation of this Bill, for a minimum of four years and a maximum of eleven. It is, Sir, altogether wrong that the mining industry should be subjected to that treatment when a suitable insertion in clause (5) will make the thing quite clear, that is to say, that no decree shall be executed against the person or property of the ward or any person holding under him who has paid his royalties due to the estate. In that case, Sir, the tenant is permitted to run on the same wheels as the Court of Wards runs: they run together. And neither of them can be dispossessed of their properties. Under this Bill I stand to be victimised because of the inability of the Court of Wards to protect me. The principle is entirely wrong. Sir, I strongly support the amendment for the recommittal of the Bill, especially for the consideration of this matter.

Nawab MUSHARRUF HOSAIN: Sir, I rise to oppose the motion for recommittal. Legal luminaries with Mr. Page at the top have tried to convince the House that the Bill requires recasting and that can be done by recommitting it to the Select Committee. Sir, the House is on fire. My friends who want to delay the affair suggest that a fire-engine should be purchased and the House should then be saved from the fire. None of my friends could convince me that they had actually considered the serious position on which the country has come to on account of the serious economic crisis. People think that tenants, *zemindars*, and middle-class men cannot wait even for a day before we can give them relief. I fully believe that we cannot wait even a day before we can give relief to them. When the Agricultural Debtors Bill was before the House I said exactly in the same strain that in the extraordinary circumstances in which we had been placed it was necessary that an extraordinary measure which had been put before this House by Government should be carefully considered by us and should not be thrown away overbroad all at once without consideration. The House showed its reasonableness when in the course of the last few days it agreed to consider that Bill from all points of view and passed it. I again say, Sir, that the time is such that we cannot wait even for a single day for improving the Bill. The Bill, Sir, when it was first introduced in the House did not contain clause 12 which has been added to it by the Select Committee. Those that are actually sinking, they never can think that 10, 12, or 20 years, hence a time may come when they cannot be saved from sinking. What the people want and what the Court of Wards also wants is to stop that sinking for some time, and if at the end they find

that the boat must sink then the Court of Wards will say: "Well, we give you a decent burial." In the meantime what will be the effect of this? Immediately the Bill is passed, the existing properties under the Court of Wards shall be saved for four years for certain, and in many cases for ten years at least. Is it not a fact that the state of the country is such that even this temporary respite that we are thinking of giving to the sinking people should not be withheld from them? Sir, the question of section 12 will come into operation not at once but the other parts will come into operation at once, giving immediate relief to the Court of Wards. The question is: should we wait for improvement of section 12 and not give those that are sinking some temporary respite at least? If the House or the gentlemen who are now proposing recommittal of the Bill and therefore its delay say: "Let those people who are sinking, sink: we don't care a two-pence for them," they, also, in their turn, may say; we, too, care a two-pence for the opinion of those who think like that. Then, Sir, what will happen ten years hence? On that consideration, and as a business proposition, we should accept both the facts together. It will be necessary for us in the future, when the time will come, to revive—to amend—section 12. Section 12 will not come into operation at once. I understand that it will be a 35-year affair. If it appears that the debts of certain wards cannot be liquidated within a reasonable time, those estates will be released. But that "reasonable time", as I understand it, has got its own interpretation. If in 35 years' time the debt of a particular debtor cannot be satisfied and if after that his estate goes to anybody—I do not mind to whom—for liquidation, I do not understand why should any blame be cast upon those who are now proposing this Bill.

Sir, my friend, Mr. Momin, after having administered this very Manual for a very long time as Commissioner of a Division has again asked me to inform him where I have found this period of 35 years. If he would look to the Manual he will find that it is 35 years; as it is said, that if in the course of 35 years the Court of Wards finds that a particular estate cannot pay off its debt and if after the period a provision is made that it will be handed over to a Board of trustees under the management of the High Court, what objection can there be? It may be that some improvements can be made in regard to the constitution of the Board of Trustees or on the power of the courts. It may be that the Court of Wards may itself administer this insolvency law. When my friend finds any difficulty in getting suitable persons to work as trustees and as he himself would not be prepared to work as a trustee and as he further thinks that no trustee can be found anywhere else in Bengal, why does he not suggest that the trustee should be the Court of Wards? (KHAN BAHADUR MUHAMMAD ABDUL MOMIN: It cannot be under the law.) My friend, the Khan Bahadur, says that it is not possible for the Court of Wards to be a trustee after it has handed over the estate. If that be the law it can be changed in a day. It is not a law which is to

be given by Mr. Page, but it is a law which is to be given by third-rate people like ourselves. Suppose, Sir, we all combine and say that this is to be law, it will be law (laughter). Why does my friend say that it is not possible to make a law? That being the case, I think that as the House is on fire, we should all try and put down the fire as quickly as possible. (KHAN BAHADUR MUHAMMAD ABDUL MOMIN: Get yourself burnt.) My friend says that I shall get myself burnt. If in the process I get myself burnt I do not mind my being burnt, if I am able to save the House from fire. So, Sir, I would first of all try to impress upon my friends one aspect of the case and that is that we want immediate relief to be given to the Court of Wards and we want to arm it with a power like this which should be immediately welcomed by the estates which are under the Court of Wards. It has been said most pertinently by some of my friends that the moment this Bill is passed a lot of impecunious *zemindars* will run to get relief and get the help of the Court of Wards and thus deprive the creditors of their dues. That is of course one of the difficulties that may arise in the future. But it is a matter for the Government to reply and not for me. I cannot speak for the Government, but as far as I have heard from some of my friends here and there, I have been under the impression that Government will never accept any such estate in future. Of course there may be exceptions here and there and some time for political reasons some estates may be taken over by the Court of Wards. I do not know what the view of Government is in the matter, but it is for my friend, Sir B. L. Mitter, to say from his place what will be his decision in the matter. And that is the only objection that has been placed before this House. As for the other objections I think they do not appear to merit the scrutiny of even a third-rate man like myself. With these observations I would like to conclude my remarks by saying——

(At this stage the member having reached the time-limit had to resume his seat.)

Maulvi ABDUS SAMAD: Sir, I was in the Select Committee which considered this Bill, and I would like to clear my position in regard to the amendments under discussion. I must at the outset say that I am entirely in agreement with the principles underlying the Bill as originally introduced in the Council. On account of the economic depression the *zemindars* have been badly hit and on the same principle that we have supported the Agricultural Indebtedness Bill, we should also support any Bill which is likely to give protection to the proprietors and *zemindars* who need protection. But, Sir, I oppose the principle contained in the new clause 3 which is sought to be added to section 23 of the Court of Wards Act. This is an amendment which is not in keeping with the Bill which was originally introduced, and it in fact sprang a surprise on the members of the Select Committee, and though it was accepted by the majority of members, still the objections are fundamental. If this clause is retained in the Bill,

then Government will be committing a breach of faith with the proprietors whose estates have already come under the management of the Court of Wards. Those *zemindars* and proprietors who handed over their estates to the Court of Wards have done so because they had confidence in the management, good faith and honesty of the Court of Wards. Now, Sir, the proposed clause seeks to introduce a fundamental change. The Court of Wards is now going to vest the properties in the hands of the trustees without the consent of the wards whose estates are in its hands. So, I fail to see how this provision could have retrospective effect. With regard to the estates which may come under the management of the Court of Wards, the Court of Wards will not take any estate under its management without proper scrutiny and enquiry. If the Court of Wards takes charge of an estate after due and proper enquiry, how can it say that it has found that the income of the estate is not sufficient to meet the liabilities of the creditors? So, before taking charge, the Court of Wards should very thoroughly examine the papers and documents to see whether any contingency is likely to arise for which the Court of Wards may have to transfer the management to a trustee. Of course, the Hon'ble Member has given us a verbal assurance that such an occasion will very rarely arise when an estate shall have to be transferred to a body of trustees. But, Sir, that verbal assurance cannot of course satisfy us because when there is a provision in the Act, who knows that the Court of Wards may not at its sweet will transfer the property to a body of trustees? So a mere verbal assurance will not satisfy us unless we positively know from the Hon'ble Member in charge that he will agree either to delete that clause or to modify it in such a way as to make the transfer contingent upon the consent of the wards. Sir, this is my opinion regarding the motion before the House.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I thought, when Mr. Page stood up to move his motion for a recommittal of the Bill, that he was going to subject my Bill to a devastating criticism; but I found that his criticism was confined only to two or three points; and it is not difficult for me to deal with them. His first point was that there should be some provision that until an estate was sold it should remain in charge of the Court of Wards. Sir, my short answer is this: When the Court of Wards decides, on good grounds, that it has to release an estate it cannot at the same time retain it. Mr. Page says: "Sell it." That is precisely what I want to avoid. That is precisely the object of the Bill, *i.e.*, not to have a forced sale at a time of depression when the estate is not likely to fetch a proper value. If the new clause, which has been subjected to so much criticism, be omitted, we know what the effect would be. It would be precisely what Mr. Page anticipates; the creditors will go to Court and sell up the estate. Sir, that is just what the Bill is designed to prevent—not to have a forced sale; our object is to preserve the estate for the benefit of

all concerned. I hope my learned friend, Mr. Page, will remember that the whole structure of the Court of Wards is that it should manage an estate for a certain period of time, *e.g.*, in the case of minors during the period of minority, and similarly in other cases, not for all time, not for the distribution of the estate. The Civil Court administers an estate with the object of ultimate distribution; that is not the scope or aim of the Court of Wards Act. The Court of Wards Act is designed to provide for the management of an estate when its proprietor is disqualified by age, sex or any other reason. It is for the management of such an estate that the Court of Wards intervenes. It is for the purpose of saving estates and not for the purpose of liquidating them. That is the difference between the Court of Wards management and administration by the Civil Court. What Mr. Page suggested was that the Court of Wards management should take the place of Civil Court administration, that is the final liquidation of the estate. Sir, that is not the object of the Court of Wards Act and we cannot have it. My friend next asked what would happen if the creditor goes and adjudicates the proprietor. Whether the clause which has been debated so much was there or not, the creditor could always go to the Insolvency Court. That clause makes no change in the position. Even after this Bill is passed, a creditor may go and adjudicate, but what will happen? Nobody will be loser or gainer by such adjudication: instead of the Civil Court administering the estate in its civil jurisdiction, it will administer the estate in its insolvency jurisdiction. That is all that will happen. The point is that the control should be the control of the Court and not the unlicensed control of the proprietor; that is the whole object of the new scheme. So long as there is the control of the Court, the estate is preserved and whether the Court exercises its control in its ordinary civil jurisdiction or in its insolvency jurisdiction is immaterial. Then, my friend said in case of adjudication what becomes of the trust. The trust will have exhausted itself. So far as the Court of Wards is concerned, as soon as it makes over the control to the Civil Court, it goes out of the picture; then it is the administration of the Civil Court. Whether the Civil Court keeps the trustees or appoints new trustees or a receiver, the control will be that of the Civil Court. The original trust will have exhausted itself so far as the Court of Wards is concerned; and so far as the trustees are concerned they will be under the directions of the Court. The Court will have power to appoint new trustees and otherwise to exercise any power which the law gives the Court. Therefore, the position is not altered, in any view of the case; and it is an improvement on the present position, in that the control is given to the Civil Court which is calculated to preserve the estate for the benefit of all and eventual equitable distribution amongst the creditors and making over the surplus to the proprietor.

Coming to Khan Bahadur Abdul Momin, his first observation was that he objected to the principle of the whole Bill. That stage is gone;

the principle of the Bill has been accepted by the House and it is too late to raise any objection now on that score. Khan Bahadur Momin answered my friend Mr. Page on the scheme of making over the estate to the Civil Court. Mr. Page's contention was that it won't work and practically no one would accept the trust. Khan Bahadur's point was it would work only too well, only the estate would be sold up. One destroys the other. Mr. Momin answers Mr. Page and Mr. Page answers Mr. Momin. I think this section will not probably be brought into operation at all. When the Court of Wards takes charge of an estate, it is with a view to preserve it; transfer of control will be the last resort. When there is no way of saving the estate, then, the Court of Wards will think of releasing it; and even then, the Court of Wards will give an opportunity to the creditors and the proprietor to come to some arrangement. Failing such arrangement, as a last resort, the Court of Wards will transfer control to the Civil Court. So far as I can visualise, this clause will never come into operation, but the existence of the clause will have the effect of preserving the interest of everybody concerned.

In connection with the point of insolvency, I omitted to say one thing which was in my mind and that is this: It is unlikely that any creditor will go to the Insolvency Court. *Zemindars* have been indebted before. Has anybody ever heard of a creditor going to the Insolvency Court to adjudicate a *zemindar*? There may be cases; I do not know, but I have not heard of any. Why is that so? The reason is obvious. It was Khan Bahadur A. Momin who said that most of the creditors are secured creditors. I accept that position, but does not the Khan Bahadur know that a secured creditor is outside the law of insolvency. The insolvency law has nothing whatsoever to do with securities. I shall read one passage from a standard work on the Law of Insolvency: "A secured creditor stands outside bankruptcy." He may rely on his security or, as it is said, "sit upon his security and need not prove." A secured creditor who comes in under the insolvency has the following three courses open to him, namely, he may realise his security and then prove for the balance; secondly, he may surrender his security and prove for the whole debt, and, thirdly, he may state in his proof the value on which he assesses his security and prove for the balance after deducting the assessed value. It comes to this, that the Insolvency Court deals only with one kind of creditors, that is, unsecured creditors. They are all on the same footing; there is no distinction between secured debt and unsecured debt in an Insolvency Court. That is why, if most of the creditors are secured creditors, they do not go to the Insolvency Court, because it is not necessary and if they do go, they have to surrender their security which they would not be willing to do. So the argument based on insolvency is a fanciful argument and is not real. Mr. Page, fresh from the High Court, spoke here like an Advocate.

He had to prove a certain case for which he had been briefed. He argued as if he was putting his client's case before a Court.

Mr. Ross says that if the Court of Wards defaults, then the lessee under the Court of Wards runs the risk of being dispossessed of his lease. Mr. Ross makes the assumption that the Court of Wards must go on systematically making defaults in paying the superior landlord's rents. If the estate is in such a condition that the superior landlord's rent cannot be paid, the Court of Wards is not likely to retain that estate. Hon'ble members are aware that under section 9 of the Court of Wards Act the Court of Wards has got absolute discretion, unfettered by any condition, to release an estate any time it chooses. If the Court of Wards finds that the estate is in such a desperate condition that even the superior landlord's rent cannot be paid, far less the debts of the proprietor, the Court of Wards is not likely to keep that estate in its hands. Assuming that the Court of Wards does make default in paying the superior landlord's rent, Mr. Ross can pay and Mr. Ross will be able to reimburse himself out of the rent due by him to the Court of Wards. I will refer Mr. Ross to section 69 of the Indian Contract Act which says "a person who is interested in the payment of money which another is bound by law to pay, and who, therefore, pays it, is entitled to be reimbursed by the other." That is to say, if Mr. Ross who is interested in the payment of the superior landlord's rent which the Court of Wards is bound to pay by law, pays that rent, he would be entitled to be reimbursed by the Court of Wards. He may ask how can he reimburse himself? He can deduct it against his payment for the next year. It is not necessary to make any specific provision in the Bill to that effect.

Nawab Musharruf Hosain said that the Court of Wards should be the trustee. The objection to that is this: that will mean alteration of the whole structure of the Court of Wards Act, and a reconstruction of it. When the time comes, probably under the new constitution, the new legislature will no doubt undertake to take up Mr. Page's point for a comprehensive recasting of the whole of the Court of Wards Act. That time is not yet come. I oppose this motion for recommittal.

The motion being put, a division was taken with the following result:—

AYES.

Ali, Maulvi Nasean.
Chowdhury, Maulvi Abdul Ghani.
Chowdhury, Haji, Badi Ahmed.
Cooper, Mr. G. G.
Dunlop, Mr. R. W. B.
Kasuji, Maulvi Jiar Rahman Khan
Fazlullah, Maulvi Muhammad.
Guthrie, Mr. F. G.
Hakim, Maulvi Abdul.
Haque, Kazi Emdadul.
Hossain, Maulvi Muhammad.
Khan, Khan Bahadur Maulvi Hesamuddin Ali.
Khan, Maulvi Tamizuddin.
Lascon, Mr. G. W.
Momin, Khan Bahadur Muhammad Abdul.
Page, Mr. W.W. K.
Quasem, Maulvi Abul.
Rahman, Maulvi Azizur.
Ray, Babu Amulyadhan.
Roe, Mr. J. B.
Steven, Mr. J. W. R.
Thomson, Mr. W. H.
Walker, Mr. J. R.
Wordsworth, Mr. W. G.

NOES.

Ahmed, Maulvi Khwaja Muhammad, Khan Bahadur.
Ahmed, Khan Bahadur Maulvi Emaduddin.
Bal, Babu Lalit Kumar.
Bal, Rai Bahadur Sarat Chandra.
Banerji, Rai Bahadur Keshab Chandra.
Barma, Babu Premhari.
Basir Uddin, Khan Sahib Maulvi Mohammed.
Basu, Babu Jatindra Nath.
Bose, Mr. S.
Bose, Mr. S. M.
Chanda, Mr. Aparna Kumar.
Chaudhuri, Khan Bahadur Maulvi Hafizur Rahman.
Chaudhuri, Dr. Jogendra Chandra.
Chaudhuri, Babu Kishori Mohan.
Chaudhuri, Maulvi Syed Osman Haider.
Chokhany, Rai Bahadur Ram Dev.
Cohen, Mr. D. J.
Das, Babu Guruprasad.
Ghose, Dr. Amulya Ratan.
Gilchrist, Mr. R. N.
Gladding, Mr. D.
Graham, Mr. H.
Guha, Babu Profulla Kumar.
Haider, Mr. S. K.
Hogg, Mr. G. P.
Hooper, Mr. G. S.
Hussain, Nawab Musharruf, Khan Bahadur.
Hussain, Maulvi Latafat.
Khan, Maulvi Abi Abdulla.
Mahi, Mr. R.
Martin, Mr. C. M.
Mitter, Mr. S. C.
Mitter, the Hon'ble Sir Brojendra Lal.
Mitra, Babu Sarat Chandra.
Mullick, Mr. Mukunda Behary.
Nag, Babu Sati Lal.
Nandy, Maharaja Srie Chandra, of Kasimbazar.
Nazimuddin, the Hon'ble Khwaja Sir.
Porter, Mr. A. E.
Rahoom, Mr. A.
Rai Mahatai, Manindra Deb.
Ray, Babu Khetter Mohan.
Ray, Babu Nagendra Narayan.
Ray Choudhury, Mr. K. C.
Reid, the Hon'ble Mr. R. N.
Roxburgh, Mr. T. J. V.
Ray, Babu Haribansa.
Ray, Mr. Uttiswar Singh.
Ray, Mr. Sarat Kumar.
Ray Choudhuri, Babu Hem Chandra.
Sinhee, Mr. F. A.
Sahana, Rai Bahadur Satya Kinkar.
Sen, Rai Bahadur Akshay Kumar.
Singh, Srijut Taj Bahader.
Singha, Babu Kshetra Nath.
Stevens, Mr. H. E.
Townend, Mr. H. P. V.

The Ayes being 24 and the Noes 57, the motion was lost.

The question that the Bengal Court of Wards (Amendment) Bill, 1935, as reported on by the Select Committee, be taken into consideration was put and agreed to.

The question that clause 1 stand part of the Bill was put and agreed to.

Clause 2.

Maulvi ABDUS SAMAD: Before I move, Sir, I beg to submit that consideration of this motion may be postponed till amendments Nos. 30-36 are disposed of, because this amendment is for the deletion of the words "subject to the provisions of clause 3 of section 23" and those amendments relate to that clause. If that clause remains, it will not be necessary for me to move this motion.

Mr. PRESIDENT: It does not matter. You can move your motion at this stage. I want to take up the consideration of the Bill clause by clause in the proper order unless there are very good reasons to the contrary. Yours is an amendment relating to clause 2(*1*), and here is an opportunity for you to move it.

Maulvi ABDUS SAMAD: Sir, I beg to move that in clause 2(*1*), in proposed section 9A, lines 5 and 6, the words "subject to the provisions of *clause* 3 of section 23" be omitted.

Now, Sir, clause 3 of section 23 of the Court of Wards Act seeks to thrust an estate into the hands of a trustee when the Court of Wards

decide to withdraw from the charge of any property which in its opinion has an income insufficient to pay the liabilities of its proprietors—secured and unsecured and so on. New section 9A says: "When the Court of Wards withdraws from the charge of such property, it shall publish in the manner provided in section 64A a notice of the termination of the charge and thereupon subject to the provisions of clause 3 of section 23 such charge shall terminate....." Now, Sir, the addition of this new clause to section 23 is highly objectionable, because its acceptance will mean thrusting an estate upon a trustee who can never manage an estate better than the Court of Wards. The estates which are already under the charge of the Court of Wards are estates which have been handed over to it by the *zemindars* or proprietors in the belief that they would be managed by the Court of Wards direct. Under that impression and under that good faith they have handed over their properties to the Court of Wards. If this Bill clause remains, then it will mean that the estates which have already come under the Court of Wards will be bound by that provision; whereas when the proprietors of those estates entered into an agreement with the Court of Wards and handed over its management to that body they had no idea that they would ever be transferred to trustees, and that even without their knowledge and consent. Of course, there is a provision that notice will be served to creditors as well as to the proprietors, and if they fail to come to an arrangement, then and then only will those estates be vested in trustees. Now, Sir, it is provided "if they fail," but why should proprietors be compelled against their will to hand over their estates to trustees? The Court of Wards has no business to do so. When it finds that it is not worth managing an estate, it should forthwith, after due notice to the proprietors and the creditors, hand over the estates to the proprietors themselves and not to trustees. It is an unjust and inequitable provision, and as such I propose that these words should be deleted.

Maulvi ABUL QUASEM: Sir, I rise to give my whole-hearted support to the amendment just moved by my friend, Maulvi Abdus Samad. The same amendment also stands in my name. With due respect to the Hon'ble Member in charge of the Bill, may I just submit to this House that when in the Select Committee this sub-clause (*3*) was proposed to be inserted in this Act, viz., clause 3 of section 23, it came as a great surprise to many members of the Select Committee. I hope that I am not misrepresenting Sir Brojendra when I say that though he gave some hint in his speech in the Council in support of his motion for reference of the Bill to a Select Committee, about his intention to introduce such a provision, we had not been told in the speech about the details of the proposal. So, when Maulvi Abdus Samad in a previous speech said that it was sprung as a surprise upon the members of the Select Committee, I think he was perfectly correct. What the

proposed section proposes is an altogether new thing. In my minute of dissent I have said that this section inserts a new provision and a new principle altogether. To say that the House in agreeing to refer the Bill to the Select Committee accepted also the principle contained in this new clause is to say something which would not be quite true. Sir, what I feel in this matter is that the members, who supported the motion for recommittal of the Bill to the Select Committee, had justification for their attitude in that further time should have been allowed to consider the new proposal and the public should have been allowed an opportunity of expressing its opinion, at least that section of the public which is vitally interested in this particular clause. But this has not been done. The House is now considering the Bill, clause by clause. What is proposed in proposed clause (3) of section 23 is that when the Court of Wards finds that the affairs of a particular estate are hopelessly involved, then for the purpose of administering the estate, in the sense of distribution of the assets, there should be appointed trustees with the consent of creditors—but you will remember, Sir, not with the consent of the *zemindars* concerned, who may be informed of the fact but whose consent would be quite immaterial. If the creditors agree, then the estate would be handed over to the trustees. If the creditors fail to elect trustees, who are to be not less than two, or if the trustees elected by them refuse to act, then the Court of Wards will have power to appoint trustees. The trustees are to be subject to the jurisdiction and control of the Civil Court. I submit, Sir, the remedy suggested here is worse than the disease. Every one knows that when a particular estate becomes encumbered, the proprietor seeks sanctuary with the Court of Wards as protection against creditors. The Court of Wards, after giving what consideration it likes to the proposal, takes over the management of the estate; and after some time when it finds that the affairs of the estate are so much involved that there is no hope of extricating the estate from the muddle, then the insolvency procedure suggested in this clause has to be resorted to. In whose interest? In the interest of all creditors—unsecured as well as secured. An equitable distribution of the assets is the guiding idea. But I do submit for the consideration of the Hon'ble Member whether the cumbrous procedure will not in practice prove to be very difficult and costly to the creditors and whether it will be really productive of any of the benefits which he has in view. When the Court of Wards manages an estate, it has got the necessary knowledge and experience; it has got the necessary expert staff at its command; and when after management for some years it finds that it cannot extricate the estate out of the difficulties in which it is involved, instead of handing back the estate to its proprietor, it is to hand over the estate to trustees who may have no experience in the management of estates at all and who may not have the necessary efficient establishment to carry on the management of the estate. During the period the estate will be in the hands

of trustees—and it may be for a number of years—rents will have to be collected, Government revenues will have to be paid, cess demands will have to be met, in addition to other demands; and all these burdens are to be imposed upon the trustees, which the Court of Wards did not find it easy to bear. Is it just? Is it reasonable? I ask the House seriously to consider whether the procedure proposed in the Bill will be any improvement upon the present situation, whether really any good will be done to any creditor. Then, will it not be very unjust to the proprietor, who, when he handed over the estate to the Court of Wards, had no idea of any such provision? We all know that administration by the Court of Wards is a costly affair. When an estate passes into the management of the Court of Wards, it is already encumbered. As a result of the management by the Court of Wards, the burden is not lessened, rather increased by reason of the heavy cost of administration. With all this added burden the estate is now sought to be made over to trustees. I do not know what extraordinary qualifications they will possess to be able to manage the estates which the Court of Wards has not been able to manage satisfactorily. Where is the utility of the procedure suggested? Then, Sir, liquid money will be coming into the hands of the trustees. No provision has been made as to the taking of any security from the trustees before making over charge to them. Supposing they betray their trust, what guarantee is there that the money they may defalcate will be realised? Will not the creditors stand to be engulfed in additional losses?

Sir, another point is this. It has been stated by Sir Brojendra Lal Mitter that instead of maintaining the trustees, the Civil Court may think it expedient to remove them and appoint new trustees or receivers. There is no provision about receivers, although the provision is there that the Court may feel it expedient to apply the insolvency procedure; but that is not the only idea. The Court will be expected to administer the estate ordinarily only by paying off the creditors. Sir, I do not know what is the state of affairs prevailing in the Original Side of the High Court, but from the experience I have of mufassal Courts, I do think that the mufassal Courts will hardly have the experience, the patience, the necessary knowledge and the time to give well-thought-out directions to the trustees or receivers concerned for the management of involved and encumbered estates which have been given up by the Court of Wards. You are placing a burden by this provision upon the Civil Courts in the mufassal which they will feel unable to discharge satisfactorily. Sir, that is the view I hold after some knowledge of the Civil Courts in the mufassal. As it is, Sir, the sort of directions which the Courts give and the control they exercise in respect of those estates which are in the hands of receivers leave much to be desired and I do not think that the ends of justice are always met. The Civil Courts in the mufassal are already overworked, thanks to the thundering and impossible High Court circulars which are issuing in rapid succession.

In the present state of things the Courts cannot give sufficient time to the consideration of intricate questions and sometimes they have to work under such great pressure that I think the kind of close and careful attention which they ought to give to questions which may come up in regard to involved estates they will not be in a position to give. I do submit, therefore, this aspect of the question also for the consideration of the House.

Sir, perhaps some members do not know that there is a section in the Court of Wards Act—I refer to section 10—which says:—

"Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890, appointing a guardian of the person or property of a minor or both;

whenever a Civil Court removes under section 39 of the same Act, the guardian of a minor;

or whenever a person has been adjudged, under Act XXXV of 1858, to be of unsound mind and incapable of managing his affairs,

if the property of such minor or his qualified proprietor consist in whole or in part of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and he shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so."

So we find, Sir, that there is already a provision in the Court of Wards Act that the Civil Court may ask the Court of Wards to take charge of particular properties. What Government proposes to do is to ask the Civil Court to do what the Civil Court may ask the Court of Wards to do. I do not really understand the meaning of the procedure that is suggested by the Government. The Civil Court in order to administer the estate of a minor under the Guardians and Wards Act may seek the aid of the Court of Wards; now the same Court of Wards is going to hand over the charge of an estate which it could not manage satisfactorily to the charge of the Civil Courts. There being the consideration that the Civil Courts are not in a position to administer an estate under certain circumstances, this particular provision finds a place in the Court of Wards Act. The action of Government seems to me to have the effect that they are going back on the principle that is already in the Court of Wards Act. Now the Court of Wards Act is about 56 years old; it was enacted in 1879 and during all these years this provision has remained in the Act. Now, the Court of Wards is to ask the Civil Court to come to its help. Is this correct, Sir? If you think that in the interests of secured and unsecured creditors there should be somebody to make an equitable distribution of the assets of an estate, why not give this power to the Court of Wards? If you do that, the difficulty will be solved. The Court of Wards is a statutory body with necessary expert and technical knowledge and wide experience.

It has been dealing with these problems for a very long time. How do you think that the Civil Courts possess these required qualifications? As I have already said, Sir, I would repeat that the remedy suggested by this new procedure is worse than the disease, and it will not satisfactorily serve the end which the Government has in view as Sir B. L. Mitter was candid enough to say that the new provision will probably be never brought into operation. Then why do you try to insert this provision in the statute? Do away with it. It is not necessary; it will prove in practice difficult, dilatory, costly and unsatisfactory. It will be unjust to the proprietor. I, therefore, support the motion for the deletion of the words "subject to the provisions of clause 3 of section 23."

Mr. F. A. SACHSE: Sir, both the last speakers have really been speaking on behalf of amendment No. 30 which proposes the entire omission of the new clause 23(3). This amendment is purely consequential on that proposal. Now, I agree with Maulvi Abdus Samad and with Mr. Page, who both make the same point, that it would be unfair to subject any estate under the Court of Wards to the operation of this new clause. The Court would never contemplate using this section for two or more years, especially during a period of depression. We would wait until we find what the effects of the amendment to section 10(*c*) are and whether owing to keeping creditors out of Court we are able to improve our prospects of paying all their dues to all the creditors in the end. But if this clause is passed, as I told the Select Committee, the Court of Wards will certainly give special notice to every proprietor now under the Court of Wards, warning him that if he is afraid that owing to the operation of the section his estate may have to be handed over to trustees because a complete list of all his assets shows that the full value of his property is less than his liabilities, then he should apply for release. We shall give them plenty of time, at least a year's time.

Sir, I have not at all been able to understand Khan Bahadur Momin's objection to the principle of the new section. I think possibly some members have been misled by the wording of the new section. It says that if the property be not sufficient to pay off all the liabilities, it may be handed to trustees instead of to the proprietor on release. One member has suggested an amendment that if the income of the wards estate is not sufficient to pay off all his liabilities, it may be so dealt with. There was never any idea of using this provision, if in 35 years or in 50 years the income of the estate would pay off all its liabilities; it is only going to be used in cases where instead of interest being paid regularly, it is piling up every year and the total liabilities of the proprietor are found to be in excess of the total value of all his properties at the highest estimation. The intention of this new clause is to allow us, in such cases instead of handing over the property to the proprietor, so that he can reduce the assets still lower before he makes

them over to the creditors through the agency of the Civil Courts, to hand them over to the creditors at once. Sir, it seems to be an absolutely fair proposal, and I do not understand how any member of the House can think that it embodies a wrong principle.

Sir, these remarks ought to have been made in connection with amendment No. 30 and I hope that when that amendment is taken up these arguments will not be repeated.

The amendment was put and lost.

Khan Bahadur MUHAMMAD ABDUL MOMIN: On a point of information, Sir. Will the decision on this motion affect the main issue in amendments 30-36? If not, then I have no objection.

Mr. PRESIDENT: I am afraid it does.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I only want to make out that the decision on this amendment may not affect a further discussion of amendments 30-36.

Mr. PRESIDENT: It does do that and I think that the House cannot go back upon its own decision. To save time I may say that I shall carefully go through this amendment and see whether a discussion on clause 12(*ii*) can take place when that clause is reached.

Maulvi ABUL QUASEM: On a point of order, Khan Bahadur Momin simply wanted a ruling if this point might stand over if proposed section 23(*3*) were taken up. You were pleased to say that you would take up the Bill clause by clause.

Mr. PRESIDENT: But the House has negatived your proposal with its eyes open and that matter cannot be revived. I have, however, promised to look into the matter and that should satisfy you Maulvi Sahib.

Mr. J. B. ROSS: I beg to move that in clause 2(*1*), in proposed section 9A(*b*), last line, the words "for the preservation or benefit of such property" be omitted.

It will be seen by a reference to the clause that this refers to contracts entered into by the Court of Wards while the estate was under their management. I cannot understand why Government seek to introduce a proviso in relation to these contracts in respect of restored estates. What might be considered for the benefit of the estate to-day might very well be argued in a few years' time as not being at all beneficial to the estate and under such an argument it is quite possible that a contract entered into will be rendered null and void. After all, contracts are contracts. It is presumed that they were entered into in good faith and it seems to me that there is no reason whatsoever for this

qualification on the release of an estate to the proprietor. It merely gives him ground to attempt to repudiate his contracts. Actually within my knowledge at the present time whilst one of the largest estates in Bengal was in the hands of the Court of Wards and under their management the Court gave an undertaking that a certain lease would be renewed on the application of lessees on expiry. The estate was released some years ago and the proprietor is now attempting to repudiate that undertaking and is refusing to renew the lease. I doubt whether he will succeed in that repudiation under the law as it stands to-day, but it is pretty definite that with this proviso here he could make out a very good case because of the fact that the rate of royalty on renewal is very low. Nevertheless, there may be people who on the strength of this undertaking have raised money or floated a company to work the property. Therefore, I think that this is a matter which should not be left in doubt. There is no real reason why the Hon'ble Member should not accept this amendment because it does not seem to me to affect the Bill in any way but merely clears up a point which might result later on in argument and a good deal of difficulty. Therefore, Sir, I commend my amendment to the attention of the Hon'ble Member.

The Hon'ble Sir BROJENDRA LAL MITTER: I am afraid, Sir, I cannot accept this amendment. In the first place, the acceptance of this amendment would make the clause meaningless. In that case it would read like this:—

"The owner of the said property shall be restored to the possession thereof from the said date subject to any order made by a Civil Court and to any contracts entered into by the Court of Wards."

Sir, contracts entered into by the Court of Wards may be in relation to many estates. Is an estate to be subjected to a contract which the Court of Wards may make in relation to another estate? It would be absurd. These words, "for the preservation or benefit of such property" are a restriction upon the Court of Wards and on behalf of Government I am proposing to submit the Court of Wards to that restriction. Mr. Ross said that contracts beneficial at the time they were made might subsequently turn out to be prejudicial and, therefore, such contracts would not be saved. That would not be the meaning of this clause. Contracts entered into "for the preservation or benefit of such property" must refer to the time at which they were made; it does not refer to any subsequent time. If it was beneficial at the time it was made, then it will be binding. If not beneficial at the inception, then the question does not arise. I oppose the amendment.

The amendment was put and lost.

The question that clause 2 stand part of the Bill was put and agreed to.

Maulvi ABUL QUASEM: Sir, I beg to move that in clause 3(*1*)(*a*), in the proposed proviso, lines 4 and 5, for the words "notice that a suit or proceeding is pending in respect of such claim," the words "intimation of that fact" be substituted.

Sir, it is a purely drafting amendment. This amendment seeks only to avoid the repetition of some words which occur already and which repetition I consider to be totally unnecessary. It is for the sake of good language only, if I may so put it, that I move this amendment. The word "notice" occurs twice in close juxtaposition and my object is to avoid that.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I accept the amendment.

The amendment was put and agreed to.

Clause 3.

The question that clause 3, as amended, stand part of the Bill, was put and agreed to.

The question that clause 4 stand part of the Bill was put and agreed to.

Clause 5.

Maulvi ABUL QUASEM: Sir, I beg to move that in clause 5, lines 1 and 2, for the words, figures and letter "For section 10C of the said Act the following sections shall be substituted, namely:—" the following words, figures and letter be substituted, namely:—

"After section 10C of the said Act the following sections shall be added, namely:—"

Sir, my reason for moving this amendment is shortly this. Clause 5 seeks to substitute a new section 10C for the existing section of the Act. I want, Sir, that the existing section 10C should remain as it is, and not be permanently replaced by the proposed new section. I only want to have the proposed section 10C as 10CC, and for a particular reason. Under the existing section only one year's moratorium as regards execution of decrees is given and this moratorium had served its purpose well for 56 years. Government has stated in the Statement of Objects and Reasons that the insertion of the proposed new section has been necessitated by the economic depression which is prevailing in the country. When the economic depression has passed, there should be no reason why this special moratorium should be a permanent feature of the Court of Wards Act. That is what I want to avoid. Sir, I have also suggested in a subsequent amendment that there should be a limitation of time during which this new proposed section should

operate. I have suggested that at the end of five years the proposed new section should cease to operate and the existing section 10C should again be in full force and operation.

Sir, with your permission, may I move at this stage amendment No. 11 also?

I beg to move that in clause 5, proposed section 10C be renumbered as 10CC.

My object for doing so is, as I have already said, not to give the proposed section a permanent place in the Act. In that section a longer moratorium is suggested and to this suggestion exception has been taken by an influential group in this House—I mean the European Group. What I suggest is that just as the House has already accepted the principle in connection with the Agricultural Debtors Bill that no application will be entertained by any Conciliation Board which is not made within five years from the establishment of the Board, the House should apply the same principle here, because both provisions are necessitated by the emergency in the shape of the economic depression. The European Group was insistent that there should be some explicit provision in the Agricultural Debtors Bill to show that the Bill was meant to meet a temporary emergency. When the Government has stated in the Statement of Objects and Reasons to the present Bill that this longer moratorium has also been necessitated by the economic depression which is prevailing in the country, I do not see why they should not restrict the operation of the proposed clause for a limited period. It is only logical that they should do so. I have suggested in my amendment, No. 24, that there should be the same time-limit as was accepted in connection with the Agricultural Debtors Bill. I want therefore that the present section 10C should not be deleted, but allowed to stand and that the proposed section should be added as 10CC for a time only.

Sir, with your permission, I beg also to move that in clause 5, to proposed section 10C(*1*), the following paragraph be added at the end, namely:—

"This sub-section shall have no application and force in respect of any property of which the Court of Wards may take charge after the expiration of five years from the date of the commencement of the Bengal Court of Wards (Amendment) Act, 1935."

Sir, I shall reserve my remarks regarding this amendment till to-morrow.

Adjournment.

The Council was then adjourned till 11 a.m. on Thursday, the 19th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Thursday, the 19th December, 1935, at 11 a.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, the three Hon'ble Members of the Executive Council, the two Hon'ble Ministers and 84 nominated and elected members.

STARRED QUESTIONS

(to which oral answers were given)

Irrigation schemes for Bankura.

*50. **Rai Bahadur SATYA KINKAR SAHANA:** Will the Hon'ble Member in charge of the Irrigation Department be pleased to state—

(*i*) the names of the Irrigation schemes that have been prepared and matured for the Bankura district;

(*ii*) the acreage to be irrigated from each of them;

(*iii*) the estimated cost for each scheme; and

(*iv*) what scheme or schemes, if any, the Government have been contemplating this year for the improvement of sanitation and agriculture of the district by way of help to the district authorities to cope with the apprehended distress and by supplying some work to the unemployed labourers?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Khwaja Sir Nazimuddin): (*i*) Out of a number of Irrigation schemes in the district of Bankura, which have been and are being investigated by this department, two have matured in the sense that the investigations have been completed. These are:—

(*1*) The Berai Canal Scheme.

(*2*) The Kulai Khal Scheme.

(*ii*) The areas to be irrigated are 9,000 and 600 acres respectively.

(*iii*) The estimated costs of the schemes are Rs. 5,41,193 and Rs. 49,367, respectively.

(iv) Government are considering how best to arrange for the re-excavation of old silted up irrigation tanks in Bankura and other districts in Western Bengal. To cope with existing distress the following amounts have already been allotted to Bankura district during the present financial year:—

		Rs.
Agricultural loans	...	2,35,000
Land Improvement loans	...	35,000
Advances to the District Board for test relief works	...	35,000

In addition, a scheme is in operation for assisting weavers to dispose of the products of their looms.

Rai Bahadur SATYA KINKAR SAHANA: Will the Hon'ble Member be pleased to state whether the Berai Canal and the Kulai Khal schemes are going to be taken up on a co-operative irrigation basis or whether the Irrigation Department is going to take up the work on behalf of Government?

The Hon'ble Khwaja Sir NAZIMUDDIN: We have not yet come to a decision on this point, Sir.

Rai Bahadur SATYA KINKAR SAHANA: In view of the fact that only 9,000 acres are to be irrigated from the Berai Canal, and 600 acres from the Kulai Khal and that the cost of the former scheme is estimated to be Rs. 5,41,000 odd, and that of the latter to be approximately Rs. 50,000, has the Hon'ble Member considered that the costs are going to be too high, and that unless Rs. 6 per acre is the taxation, the capital expenditure and maintenance cost will not be covered?

The Hon'ble Khwaja Sir NAZIMUDDIN: That may be so, Sir.

Rai Bahadur SATYA KINKAR SAHANA: With reference to answer (iv), is the Hon'ble Member aware of the fact that there are innumerable tanks in the districts of Western Bengal, and that each one of them irrigates some plots of land?

The Hon'ble Khwaja Sir NAZIMUDDIN: That is so, Sir.

Rai Bahadur SATYA KINKAR SAHANA: Is the Hon'ble Member aware of the fact that those tanks are not in a proper condition, simply because they are owned by a number of co-sharers who are not on friendly terms?

The Hon'ble Khwaja Sir NAZIMUDDIN: That may be one of the causes, Sir.

Rai Bahadur SATYA KINKAR SAHANA: Has the Hon'ble Member considered the fact that without compulsory legislation such owners will never care to improve the condition of their tanks?

The Hon'ble Khwaja Sir NAZIMUDDIN: That question is under consideration.

Abdulpur-Amnura Branch of Eastern Bengal Railway.

*51. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware that in the Eastern Bengal Railway time table of April, 1934, at page 10, the following rule appeared, namely:—

"Abdulpur for the Abdulpur-Chapai-Nawabganj Branch. Passengers to and from stations on the Abdulpur-Amnura Branch or via when travelling from and to stations north of Abdulpur on the main line or via by the up and down Darjeeling and Assam Mail and North Bengal Express trains are permitted to change their trains at Ishurdi without any extra payment for the portion of the journeys between Abdulpur and Ishurdi."

(*b*) Is the Hon'ble Member also aware that this rule has been omitted from the time table of April, 1935?

(*c*) Will the Hon'ble Member be pleased to state why this rule has been omitted?

(*d*) Is the Hon'ble Member aware that all the Mail and Express trains do not stop at Abdulpur?

Mr. D. CLADDING: (*a*) to (*c*) The rule in question has not been withdrawn but has been transferred to page 153 of the current three-anna Eastern Bengal Railway time table as rule 37 (*b*).

(*d*) Does not arise.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Illiteracy in Bankura.

21. Rai Bahadur SATYA KINKAR SAHANA: (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state the present percentage of literacy in each of the districts of the Burdwan Division?

(*b*) What steps, if any, have been taken by the Government to introduce the Primary Education Act, wholly or partially, in the several districts of the Burdwan Division and specially in the district of Bankura?

(*c*) Is the Hon'ble Minister aware that illiteracy is very great in the Bankura district?

Mr. H. GRAHAM: (*a*) The latest figures for 1931 are as follows:—

Burdwan	...	12·3
Birbhum	...	8·1
Bankura	...	9·9
Midnapore	...	17·5
Hooghly	...	16·0
Howrah	...	20·7

(*b*) All the District Boards of the Burdwan Division were asked to accept the optional scheme under the Bengal (Rural) Primary Education Act, 1930. The District Board of Birbhum alone accepted the scheme and it was introduced in that district with effect from 1st April, 1934. The District Board of Bankura did not accept the scheme.

(*c*) Yes.

Maulvi ABUL KASEM: Will the Secretary of the Education Department be pleased to state whether the Primary Education Act requires the consent of the district board for the introduction of primary education?

Mr. H. GRAHAM: Yes, Sir.

Rai Bahadur SATYA KINKAR SAHANA: Will Education Secretary be pleased to state, with reference to answer (*c*), what steps Government are doing to take to remove the illiteracy of the district, to some extent even?

Mr. H. GRAHAM: Government attempt to persuade members of the district board to accept the scheme, and District Officers invariably attempt in their own way to persuade the general public to accept it.

Maulvi ABUL KASEM: Considering the fact that even after the persuasion of Government and the endeavours of the District Officers, all the district boards except Birbhum have refused to introduce it, what action Government propose to take in the matter?

Mr. H. GRAHAM: I may point out to the hon'ble member that eventually all district boards will be forced to come in, but at present we are proceeding slowly.

Rai Bahadur SATYA KINKAR SAHANA: Is it known to Secretary that the Bankura District Board would not take up the primary education scheme only because there is a majority section in that board to whom the very name of Government, I may say, is a red rag?

Mr. H. GRAHAM: Yes, Sir, I am aware of that.

Government Pleaders.

22. Mr. NARENDRA KUMAR BASU: (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to state whether public notices are being issued calling for applications for the posts of Government Pleaders and Public Prosecutors?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state when and why was this system inaugurated?

(*c*) Have the Government considered the question that men with any practice in one district are not likely to apply for such posts in another district?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) Yes.

(*b*) In October last, in order to give publicity to the fact that applications were desired.

(*c*) Government does not accept the assumption.

Mr. P. BANERJI: What is the criterion on which recruitment of Government Pleaders is made?

The Hon'ble Sir BROJENDRA LAL MITTER: Legal knowledge, efficiency and integrity.

Adjournment motion.

Maulvi ABUL KASEM: Sir, I rise to ask for leave for an adjournment of the House to consider a matter of urgent public importance, namely, the situation created in the Calcutta Corporation by the resignation of the Mayor and 16 Councillors and Aldermen.

Mr. PRESIDENT: I am reading out to the House the motion of Maulvi Abul Kasem for adjournment, and I might tell the House at

this stage that I have given my consent to the motion being moved. It is to discuss a matter of urgent public importance, namely, the situation that has arisen out of the resignation of the Mayor and 15 (?) Muslim members from the Calcutta Corporation, and I appoint quarter-past-two to-morrow for the discussion of this matter, provided His Excellency the Governor does not exercise his prerogative in disallowing the motion.

Maulvi ABUL KASEM: Thank you, Sir.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILLS.

The Bengal Court of Wards (Amendment) Bill, 1935.

[Discussion on the Bengal Court of Wards (Amendment) Bill, 1935, was resumed.]

Maulvi ABUL QUASEM: With your permission, Sir, I should like at this stage to move amendment No. 25, amendments Nos. 11 and 25 being only consequential.

Mr. PRESIDENT: Yes, you can do that, and I have no objection.

Maulvi ABUL QUASEM: Sir, I beg also to move that in clause 5, proposed section "10CC" be renumbered as "10CCC." I have already told the House that I want to retain section 10C as it is in the Act, and I want to limit the operation of the proposed new section 10 (c) which is sought to be substituted in place of the existing section, to five years only. I told the Council yesterday why I wanted the operation of the proposed section to be limited to five years from the date of commencement of the new enactment, and in that connection I cited the analogy of the Agricultural Debtors Bill which the Council has just dealt with. There, Sir, in response to the demand of the European Group, the House has accepted the suggestion that there should be something on record in the body of the Bill itself to show that the Agricultural Debtors Bill was meant to be a temporary measure brought into existence to meet a temporary emergency. In the Statement of Objects and Reasons to this Bill, it has been stated thus:—

"Owing to the economic depression which has now continued for four or five years, collections in all the estates have fallen below the normal. The surpluses which were counted on when the estates were taken under the charge of the Court of Wards have not materialised, and it has been impossible to pay the interest on the debts of many estates regualarly."

Sir, this is given as the main reason for the extended moratorium which has been provided in the proposed section 10C. Therefore, Sir, when the present economic depression is over, there will remain no reason whatsoever for the continuance of this extended moratorium. In the present section, it operates for only one year in respect of execution proceedings pending in any Court in respect of an estate taken over by the Court of Wards, that is, the Court of Wards may within one year from the date of taking over charge apply to the Court concerned for the stay of an execution. Sir, I ask the House to consider seriously and carefully whether the extended moratorium which Government has suggested in the proposed clause, should have an unlimited life, because the cause for which Government wants this provision to be made, is not going to be a permanent feature of our economic life. When the present economic depression is over, why should this extended moratorium operate? When the House has already accepted the principle in respect of the Agricultural Debtors Bill, I think it is up to them in the interest of consistency to agree to the principles which I adumbrate in amendment No. 24. I do think that this section 10C, as proposed, should not have a permanent place in the Court of Wards Act. Sir, I want the existing section to remain, and I want the new section to be added separately, and I suggest that a time-limit should be set for its operation. With these words, Sir, I commend my amendments to the acceptance of the House.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I cannot accept these amendments. The argument is that the provision contained in section 10C has been proposed to meet a temporary situation, caused by the economic depression, and that when the economic depression is over, there will be no further need for the extended moratorium. My answer to that is that no one, not even Maulvi Abul Quasem, can predict at this moment as to when the present economic depression will be over. In this state of uncertainty, it is impossible for me to accept the limit of five years on the assumption that at the end of five years, the province will be again in a prosperous condition.

The second argument used was the analogy with the Agricultural Debtors Bill. I submit that that is a false analogy, because under the Agricultural Debtors Bill, both debt and interest are reduced, while in this case, the debt is not reduced, the interest is not reduced, but all the rights of creditors remain intact; only some of their rights are suspended for a time. Nothing is extinguished under this Bill, whereas certain rights are extinguished under the Agricultural Debtors Bill. Therefore, Sir, the analogy does not hold. I oppose the amendments.

The amendments of Maulvi Abul Quasem were, by leave of the Council, withdrawn.

Maulvi ABUL QUASEM: I beg to move that in clause 5, in proposed section 10C (*1*), line 2, after the word "Wards", the words "under clauses (*a*) to (*d*) of section 6 of this Act" be inserted.

Sir, section 6 of the Court of Wards Act enumerates the cases where proprietors of estates shall be held disqualified to manage their own properties. The enumeration is as follows:—

(*a*) females declared by the Court to be incompetent to manage their own property;

(*b*) persons declared by the Court to be minors;

(*c*) persons adjudicated by a competent Civil Court to be of unsound mind and incapable of managing their own affairs;

(*d*) persons adjudicated by a competent Civil Court to be otherwise rendered incapable, by physical defects or infirmity, of managing their own property; and

(*e*) persons whom the Court has declared on their own application that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court.

Sir, the amendment which I have moved seeks to exclude the operation of clause (*e*) so far as the proposed new section 10C is concerned, and I have very good reasons why this should be done. This clause (*e*) did not find a place in the Bengal Court of Wards Act until the year 1892. One can quite well understand the taking over of an estate by the Court of Wards of a person who really is in need of help, as, for example, women, minors, imbeciles, lunatics, etc. One can well understand if their estates are taken over temporarily by the Court of Wards to be managed for them because they are people who are really incapable of managing their estates. Such estates are taken over not primarily because they are encumbered, but because the proprietors are not in a position to manage their own properties. I cannot understand, Sir, the reason for the management, on the other hand, of estates of adult people who have by their own follies heavily encumbered their estates. This clause (*e*) is, in my opinion, Sir, an undesirable and mischievous one. Ordinarily, the estates of minors, people who are wards properly so called, should be managed by the Court of Wards, but here adult people are being given the privilege of coming to the Court of Wards, handing over their encumbered estates and asking for relief. I cannot understand why adult and sane people should be given relief which is really meant for those who are really incapable of managing their own affairs. Surely, Sir, we have arrived at a stage of progress when people who have mismanaged their estates, who by their extravagance and wild living have brought their estates to a sorry pass, should not be given any protection of the Court of Wards against their creditors.

There is a strong public feeling against the indulgence given to proprietors who are the cause of their own ruin and the ruin of their own estates. If the estates which are now under the Court of Wards are examined, it will probably be found that more than one-half of those estates belong to proprietors who have no real justification to receive any protection from the Court. Their estates are encumbered because of their own misdeeds and of their own follies, and such people ought not to receive any help from the State. It is for these reasons that I have brought in this amendment in order not to extend the benefits of the proposed section and of the proposed extended moratorium to proprietors who are themselves to blame for their own ruin. Although there is a salutary provision in the Court of Wards Manual, I refer to rule 7, where it is provided that recommendations to assume charge of properties of persons declared to be incapable of managing their own estates should not be made if the estate has been involved in debts entirely on account of the proprietor's extravagance or weakness of character. Sir, this salutary rule appears to be honoured more by breach than by observance. If an impartial investigation were made, it would be found that in many cases people by bringing pressure to bear upon persons in high quarters got their estates taken over by the Court of Wards, although the Court should not have done so. I wish sub-clause (*c*), section 6, were repealed. Further, Sir, it is stated in that sub-clause that in the public interest such estates should be taken over. I ask, Sir, what is that public interest? Is it in the public interest to seek to save such estates as have been overburdened with debts by their proprietors? This sub-clause, in my submission, serves as an incentive and as an encouragement to wild living on the part of many of the proprietors, and I think that if this pernicious provision were deleted altogether, it would serve real public interest. Sir, I do submit this aspect of the question for the earnest consideration of the Hon'ble Member in charge of the Bill. I submit that the privileges of the proposed section 10C should not be extended to proprietors who on their own application have been declared disqualified because they have lived extravagantly, immoderately and have run into debts without in the least caring for the consequences. On these grounds, Sir, I commend my motion to the acceptance of the House.

Rai Bahadur SATYA KINKAR SAHANA: Mr. President, Sir, I oppose the motion of my friend Maulvi Abul Quasem. My grounds are these: The protection of the Court of Wards has been extended to all classes of *zemindars* for many years, and I think that the present enactment should not take away the right of a *zemindar* from taking shelter under the Court of Wards Act. Maulvi Abul Quasem wants to enforce that section which is perhaps now obsolete that the estates of women, minors, imbeciles, and lunatics only are to be taken under

the protection of the Court of Wards. I am rather inclined to say—if I am not accused of *argumentum ad hominim*—that some very reputed friends of this province have declared that Bengal is a nation of minors and imbeciles, if not of women and lunatics. Therefore, I think that every *zemindar* should be given protection of the Court of Wards Act, and the dormant clause, that the Maulvi Sahib refers to, should not be resuscitated under the present state of things.

Mr. S. M. BOSE: Sir, I also oppose the amendment, and in doing so, I want to say a few words about the unfair attack which the mover of the amendment has gone out of his way to make on those *zemindars* whose estates have been taken over by the Court of Wards. He has said, in effect, why should we help them? They have ruined themselves by their own folly and extravagance and have run into debt. I say: "Will you kindly look to the case of the agriculturists in which case the same analogy holds?" (MAULVI ABUL QUASEM: No, no; certainly not.) Sir, during the last jute boom crores and crores of rupees have gone to the agriculturists of North Bengal and East Bengal, and where has that money gone? There are spendthrifts, Sir, in high society as well as in low society. If you blame the one, you must blame the other too, and I strongly deprecate this unfounded attack on men whose estates either through their own misfortunes, or through the misfortunes of their ancestors, or because of the present agricultural depression or other reasons have gone to the Court of Wards. If you help the indebted agriculturist, you should also help the indebted *zemindar*.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I rise to oppose the motion. About fifty years ago Government's principle was that the estates only of minors, widows and lunatics would be taken over by the Court of Wards, but afterwards in 1892 that protection was extended to other proprietors. When that principle has been extended, I think there cannot be any reason now to deprive other proprietors who are disabled from managing their own estates, not due to age or infirmity, but owing to their incapacity to manage their estates. When the principle has already been accepted and worked for the last fifty years without any objection and any question, I do not think, Sir, there can be any ground from making any differential treatment between one class of *zemindars* and another. Moreover, Sir Brojendra has already said that the estates are being taken over by the Court of Wards as a necessary element in the economic order of the province and not for the interest of proprietors but for the public interest, and that if such estates be not taken, the whole structure of the economic condition of the province will fall. This is the position. Thus, most of the estates were taken over at the initiative of the Government, and

only a few at the initiative of the proprietors. It is wrong to suppose that the estates have always been taken over at the initiative of the proprietors and the proprietors after squandering away the money, become encumbered and seek the protection of Government. There are black sheep in every society and in every class of people all over the world. There may be some persons who are spendthrift proprietors, whose character is such that they waste money on unreasonable objects and purposes and by spending prodigally become involved in debt. On the other hand, if you would make a careful scrutiny, you will find that about 99 per cent. of the proprietors are not so. If such be the case, it is very unjust on the part of my friend to arrive at such conclusion, which is fully wrong and erroneous. Had it been otherwise I would have been the first person to second it. But I cannot support the mover when he is labouring under a wrong idea and impression. It is unfair on the part of my friend to make a wrong assumption against a certain class of proprietors whose estates are being taken over, and to ask the House to accept his proposal on this theoretical basis. I oppose the amendment.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, it is unfortunate that most of the speakers while criticising my speech of yesterday have said things which I had not said at all. And I am sorry that in at least two instances I was very much misunderstood. It is not correct that I am opposed to the interest of the *zemindars* in this matter, but the reason why we object to this clause as well as to clause 12 is that we think that none of these amendments can be justified on any grounds whatsoever. Personally, Sir, I would like to see all the *zemindars* the old *zemindars*—who are at present encumbered, freed from their encumbrances and rehabilitated in their estates, if that could be done without transgressing the rights of other individuals. But to bring under protection the *zemindars* whose estates have been taken over under clause 6 (*c*) is, I think, morally wrong. In the first place, when the Court of Wards Act was first enacted, there was no idea that such estates should ever come under its protection. It was the principle even with the previous Government and of this Government also to protect minors, widows, imbeciles, etc., who without any fault of theirs were incapable of looking after themselves. In the year 1892, I believe, this amendment was introduced in the Act, perhaps for political reasons, to bring under the Court of Wards only such estates as are politically important, and protect them. When this addition was made, it was not thought or anticipated that all the *zemindars* would take advantage of this new clause for applying for protection under the Court of Wards. But what do we see now? Out of the 124 estates—or 125 estates to be exact— that are now under the management of the Court of Wards, I think that more than 50 per cent. have been taken up under this clause, and, so far as I see, without the least

justification. The mover of the amendment has read to you, Sir, the instructions of the Board of Revenue in this matter, where it is definitely stated that no estate should be recommended for being taken charge of by the Court of Wards if that estate has been mismanaged by the *zemindars* by extravagance or incapacity. But, Sir, what do we see now? Every estate that has been so taken over comes under that category, viz., it has been mismanaged by the *zemindars* themselves, and for no reason whatsoever. I say that if protection is to be given to this class of people, it would be immoral in this sense that you are giving them protection against other individuals, viz., the money-lenders, who, when they lent their money, knew that their money was perfectly safe and that they could sell up their *zemindaries* and pay themselves.

Further, Mr. S. M. Bose has quoted the analogy of the agriculturists. I think, Sir, that he will himself admit that it is perfectly unjust that the Court of Wards should take charge of these estates in this way. When the agriculturists become encumbered and get into debt, they do so on account of circumstances over which they have no control: their cattle die, or there may be a failure of crops, but all the same they have got to pay rent and, therefore, they get into debt. On the other hand, the *zemindars* get into debt not because they are in want, but because they want to live beyond their means. Yet you are not prepared to give the agriculturists the protection which they can certainly claim. If you want to protect the *zemindars*, why don't you protect the tenants also? (MR. S. M. BOSE: But they have been protected.) Sir, Mr. S. M. Bose says that the poor agriculturists have been protected. But how? By the Debt Conciliation Act which is going to be passed? But, Sir, what is there in that Bill? Personally, if Government would bring forward another Bill for scaling down the debts of the *zemindars vis-a-vis*, the money-lenders, I would certainly support it. Give protection to every section of the community, but not to one section particularly. And if you give the *zemindars* as a class the rights as in the Indebtedness Bill, I would certainly support it not because that the *zemindary* system is an ideal system, not because by this means the *zemindary* system will cease to exist because after all if one *zemindar* passes away another will step in his place—for what does it matter to the State whether an estate belongs to A or B or whether the estates of Raja Bhupendra Narayan Singh Roy of Nashipur comes into the hands of Mr. Poddar? So far as the State is concerned, it is all the same, because there is no doing away with it. But so far as the tenants are concerned, they would like to remain with the devil they know than to go over to a devil they know not of! The relation now existing between the present-day landlords and their tenants has created a chain of affection, and since we cannot do away with the whole system of *zemindary*, it is much better that the present system should continue, for it is not known whether the tenants would be in a

better condition under the newcomers or would not be subjected to greater harassment. From that point of view, Sir, I certainly think that if you bring in a Bill on the lines of the Agricultural Indebtedness Bill under the title of the Zemindars' Indebtedness Bill, or everybody else's Indebtedness Bill for their respective benefit and have some agency to scale down the debts of every debtor, I shall have no objection; but to protect only a certain class of people—and a class which has got into debt for their own misdeeds—is, I think, immoral. Again, Sir, in discussing this particular clause I would refer to the report of the Board of Revenue from which you will find that only last year out of 16 estates which were taken over by the Court of Wards as many as 8 were taken under section 6 (c). If I read to you some of the reasons why these estates have been taken over you will see whether it was justified to take them over or whether it is justified that they should be given protection. One was taken over in view of the services rendered by the proprietor during the civil disobedience movement: the charge of another estate was assumed in view of loyal services rendered to Government and indebtedness.

Mr. PRESIDENT: Khan Bahadur, what are you reading from?

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, from the report of the Board of Revenue. The only cause for taking over the estates was the administrative point of view. Most of these are small estates of an annual income of Rs. 15,000, except one the income of which is Rs. 1,73,000, and all are below an income of Rs. 73,000 per annum. Sir, if you do that, why do you not take over the estates of big *jotedars* in Rangpur which have an income of Rs. 12 to 15 thousands per annum? In this connection I would refer you, Sir, to section 63 (*1*) of the United Provinces Court of Wards Act, where the Government having perhaps felt the weakness of their case have inserted this section for the purpose of establishing an advisory committee whose duty it is, before an estate is taken charge of, to look into its affairs and then recommend whether the estate should be taken charge of or not. I think, as I advised the Hon'ble Member yesterday, it would have been better if a provision like that had been embodied in our Court of Wards Act.

Mr. Thompson in his preliminary speech referred to one of the consequences of the protection, namely, that it will be an incentive to more estates applying for assumption of charge by the Court of Wards. I am sure that that will happen as a result of what we have done, and I predict that within the course of the year the Hon'ble Member will perhaps receive applications from many estates after this Act is passed, applying for protection; and it will indeed be a very great responsibility for him either to refuse or to assume charge of such estates without having an advisory board of the sort which is established in the United Provinces.

Sir, I would like to say one word to my *zemindar* friends. They are very happy at this attitude of the Hon'ble Member towards them. They are thinking that the Government Member is overflowing with solicitude and love for them and has enacted this section for their protection. I am afraid, Sir, that they will very soon find the real significance or the real import of the amendment Bill when it becomes an Act. I might, Sir, warn them in the words of the popular song, where the poet warned the silly maidens of Mathura. I think when they will feel the real force or the impact of the solicitude and love of the Hon'ble Member they will find that their heart will break and they will have to repent.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I am sorry that Maulvi Abul Quasem has dragged down the level of the debate to a personal plane. I wish he had restrained himself a little and looked at this provision from the point view of the State. He has used the language of vituperation against a class of people in this country, which does not advance matters. Probably, when he is a little older, he will know better and learn to restrain himself.

Sir, what is the position? Protection is sought to be extended to a class of *zemindars* whose estates have been taken under sub-clause (*c*). As Maulvi Abul Quasem has pointed out, sub-clause (*c*) deals with persons who apply to have their estates taken over by the Court of Wards; and "it is expedient in the public interests" that their estates should be managed by the Court of Wards. Maulvi Abul Quasem completely ignored that aspect of the matter, that it must be in the public interests that the estates should be taken charge of by the Court of Wards. Sir, I am not here discussing, in respect of the 124 estates now under the Court of Wards, what induced the Government or the Court of Wards to come to the conclusion that in the public interest these estates should be managed by the Court of Wards; that is beside the point. We must assume that when a responsible body took charge of these estates under this section, there was some element of public interest in it. It may be that Mr. Sachse was in error in any particular case. But generally we are entitled to assume that when these estates were taken charge of, there was some element of public interest involved. That being so, let us approach this question from the point of view of public interest. Maulvi Abul Quasem as a lawyer knows that estates of persons under disability are, under the law, sometimes managed by others—I will refer him to the Guardians and Wards Act, the Lunacy Act and what are known as Wards of Chancery in English law. The Court of Wards Act has a different object altogether. It extends the protection to a certain class of persons, not for the reasons which induce Civil Courts to take charge of estates but for a different object. In this country the revenue laws are very strict. If a *zemindar*

does not pay land revenue within a certain time, his estate is liable to be sold; not only that, but all subordinate interests are liable to be annulled. Now, section 23 of the Court of Wards Act enacts that when an estate is taken charge of by the Court of Wards, it cannot be sold for arrears of land revenue. That means not only that the *zemindari* interest is preserved but all subordinate interests are preserved. If that protection were taken away, what would be the result if at a particular moment a large number of estates were sold for arrears of land revenue? Then, all the subordinate interests would be liable to be anulled. Just imagine what an economic upheaval it would involve. At a time of depression a large number of estates will run the risk of being sold for default of land revenue. If protection be not extended to those estates, there will be a tremendous upheaval by reason of all subordinate interests being annulled. Sir, it is well known that roughly about three crores of rupees come to the Government by way of land revenue, but the rents paid by the cultivators amount to something in the region of Rs. 12 crores; the difference, Rs. 9 crores, goes to maintain all these intermediate interests. All these intermediate interests will be disturbed if revenue sales take place. That is why, for maintaining the economic stability of the province, at a time of acute and unprecedented depression, it is necessary that protection should be accorded to disqualified proprietors who come under the Court of Wards under sub-clause (*c*). That is the public aspect of the question. Maulvi Abul Quasem may or may not be right in his denunciation of the proprietors who according to him were extravagant or improvident. I am not looking at the question from that point of view. I am looking at it from the point of view of the State interested in preserving economic equilibrium at a time of unprecedented depression. Now, we want to prevent sudden disturbance, we want to prevent inevitable economic unheaval by reason of these estates being suddenly exposed to revenue sales. It is for that reason necessary that protection should be extended to these estates. Sir, the main purpose of the Bill is to afford protection to involved estates. It is not the primary object of this Bill to extend greater protection to minors, women and imbeciles, but to save involved estates. If you exclude these involved estates from the operation of this Bill, then the whole purpose of the Bill is defeated. Is that the object of Maulvi Abul Quasem? It may be that he does not believe in the *zemindari* system of Bengal: it may be that he thinks that time is ripe to bring about a socialistic or a Soviet regime here. Sir, we are interested in maintaining the existing economic order; and for the purpose of preserving the economic order it is absolutely necessary that an estate which is involved and which runs the risk of being sold up should be protected for a time. I therefore oppose this amendment.

The amendment was put and lost.

Maulvi ABDUS SAMAD: Sir, I beg to move that in clause 5, in proposed section 10C (*1*), in line 2, after the word "wards" the following words be inserted, namely:—

"and the fact of the Court of Wards' inability to meet the liabilities of the ward is duly notified."

Sir, this section proposes to make the principle of moratorium applicable in respect of all estates which will come under the management of the Court of Wards irrespective of the fact whether any particular estate though under the manangement of the Court of Wards is capable of meeting its liability.

So I suggest that these words should be added. There may be many estates for which moratorium is not necessary to be extended beyond the period prescribed by the section and which may be in a position to pay off the debts under decree. There should be a clause under which the Court of Wards should notify in respect of which of these estates they are unable to pay the debts. If the Court of Wards finds that all the estates under its charge are not in a position to pay the debts, it will notify to that effect and there will be no execution of decree. Even if there is one estate which can pay its debts, why should this principle be applicable in respect of that estate? With these words I move my motion.

Mr. F. A. SACHSE: I can see nothing at all in this amendment. If all estates could pay interest on their debts regularly, there would be no need for creditors to bring suits. The clause is only wanted for the protection of those estates which are being sued by the creditors because the interest is not being paid. I therefore oppose the amendment.

The amendment was put and lost.

Mr. W. H. THOMPSON: I beg to move that in clause 5, in proposed clause 10C(*1*), line 5, for the words "four years," the words "three years" be substituted.

It is a very modest amendment. In the first stage of the discussion on this Bill in this House I made a certain number of suggestions, the chief one of which was to the effect that since Government was taking powers on behalf of the Court of Wards to the disadvantage of the creditors it should accept responsibility for safeguarding the creditors' interest when such powers fail to attain their object. When the efforts of the Court of Wards have failed to set an estate on its feet, it is Government's duty to do what it can for those creditors whose claims have been outlawed during the period of moraterium. Government and the Select Committee carefully considered my suggestion, and I wish to convey my acknowledgments particularly to Sir Brojendra Lal

Mitter, for the very careful consideration which he gave to all that I suggested. There is one point about moratorium. It is admitted that harm may come to creditors through undue extension of the moratorium which puts their claim outside the law. It is my first object in pressing this amendment to bring Government to the point of reviewing the position of each estate a year earlier than would otherwise happen. The time for reconsidering the position of an estate will arise when the circumstances of that estate change by the end of the first moratorium period. If the first period of moratorium for four years is reduced to three, then the review of the position will be put forward by one year. The present moratorium periods are four years and seven years: they add up to 11 years which is an odd figure to adopt. The Finance Department has a delightful expression which it uses in making up its budget. When it has arrived at an odd figure it provides an adjustment for rounding, and I would suggest that this moratorium period should be "rounded" from eleven years to ten years. But seriously I do think this: that four years is an unnecessarily long period for the Court of Wards to retain the management of an estate and still not be able to pay even the interest on the few debts for which decrees have been obtained After the first moratorium period the Court of Wards can take advantage of the second moratorium period merely by beginning to pay the interest on the claims which have been admitted by the Civil Court. If an estate at the end of three years' management by the Court of Wards is found not in a position to pay the mere interest on the claims which have been decreed by the Courts, surely it is time for Government to consider whether it should retain that estate. I submit that three years is quite long enough for Government to ascertain whether the estate is one which should be kept under the Court of Wards or should be released.

The Hon'ble Sir BROJENDRA LAL MITTER: Mr. Thompson is aware that the original proposal of the Government was five years: then, by unanimous agreement, by way of compromise in the Select Committtee, we accepted four years. Reasons that were given were administrative reasons. It takes at least two to three years for the Court of Wards to get to know the position of an estate which comes under its charge and before that time the Court of Wards is not in possession of sufficient particulars to make a workable scheme for payment of debts. That is why four years was considered necessary for the period of moratorium. Mr. Thompson says that during this time the creditors are going to be outlawed. Not altogether. There is provision that the creditors would be paid interest during that period and if the estate can afford to pay capital also. It is in nobody's interest that the creditors should be kept at arm's length indefinitely. When the Court of Wards takes charge of an estate,

its first duty is to see that the estate is relieved of its burden in the shortest possible time. The Court of Wards thinks that four years are necessary. I oppose the amendment.

The amendment was put and lost.

The question that clauses 5, 6, 7, 8, 9, 10 and 11 stand part of the Bill was put and agreed to.

Clause 12.

Mr. PRESIDENT: Amendments Nos. 30-36 are out of order.

Khan Bahadur MUHAMMAD ABDUL MOMIN: I anticipated that, and I suggested that I should ask for your ruling whether this clause could be inserted by the Select Committee as it was not in the original Bill.

Mr. PRESIDENT: That may be, but you did not actually raise that point. So far as this particular amendment is concerned, there may be one opportunity for you to say what you have got to say with regard to the issues involved in them. That opportunity will arise when I am putting clause 12. You may then pertinently make such observations as you intended to make on amendment No. 30. Will that suit you?

Khan Bahadur MUHAMMAD ABDUL MOMIN: But I should like to raise this point of order, because I want to have a definite ruling.

Mr. PRESIDENT: Yes, when you raise it in proper form I shall give you a ruling.

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, is it in order for the Select Committee to introduce any new provision?

Mr. PRESIDENT: I think the new clause is quite in order inasmuch as the Bill seeks to amend section 23 of the Act which lays down certain procedure to be followed and certain things to be done when an estate is released by the Court of Wards. The Bill clause under review is therefore not beyond the scope of the Bill, although it seeks to effect big change.

Maulvi ABUL QUASEM: On a point of order, Sir. Supposing (*ii*) were put to the House and deleted by the House, what would be the position?

Mr. PRESIDENT: The cross-reference in clause 2 to clause 12 (*ii*) would then be omitted as consequential.

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move that in clause 12 (*i*), in the proposed clause 3 (*1*) of section 23, line 4, after the word "opinion," the following words be inserted, namely—

"the income of."

Sir, the wording in the Bill clause is "the property is insufficient to pay the liability of the proprietor." It is not clear whether the income of the property is meant or the sale-proceeds of the property is meant. I thought, Sir, that if the words "the income of" are inserted, the meaning would be more clear, and it is with that end in view that I have moved by amendment.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, the word is "property," which must mean corpus. Property does not mean the income of property; property means the whole thing; that is to say the corpus. And if this becomes insufficient, the proprietor becomes insolvent. There is no point in introducing the words proposed as most of the estates are incapable of discharging their liabilities merely from income; and in most cases a portion of the property has to be sold. The word "property" here is to be understood in its ordinary dictionary meaning, *i.e.*, assets, corpus.

The motion was then, by leave of the Council, withdrawn.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I beg to move that in clause 12(*ii*) in the proposed clause 3 (*1*) (*23*) after the words "reasonable period," in line 7, the words "which shall not be less than 30-years" be inserted.

Sir, the reason is that there is no definition of the words "reasonable period" either in this law or in any other law in this province. I think, Sir, that in the interest of the proprietors and of the Court of Wards also this should be defined, so that a proprietor may know what would be the reasonable period, before he would ask the Government to take over the management of the estate. It may be that the Court of Wards may think ten or fifteen years to be a "reasonable period." There is no bar to the relinquishment of an estate by the Court after two or three years' administration as the discretion of considering what "reasonable period" is, lies wholly in the Court of Wards and its proper exercise cannot also be questioned. Under the circumstances, some check on its exercise should be provided in this Act. Generally, the Court of Wards takes fifteen to thirty years as a reasonable period. So, in the interest of both the parties, I want this expression to be defined.

Generally speaking, the Court of Wards takes up estates in which there is possibility of redeeming them after administrating for some time. Fifteen years are the average number of years in which an

encumbered estate may hope to clear off debts and such estates are generally taken up by Courts. But there may be estates in which more than that period, say twenty or thirty years or more, are required to restore the normal position of solvency. What would be the fate of such an estate? Are they to be declared as hopeless or will they be placed under the administration of creditors as proposed in this section? Generally, estates are to be administered for two or three years before any scheme can be made of the probable number of years in which the debts can be cleared, and it is for this that the extension of the moratorium is proposed in this Bill. If after administering the estate for two or three years, the Court finds that the estate is not redeemable in the course of reasonable time of fifteen years, but it will take more than fifteen years, they will then give up the administration and place it under the trusteeship of the creditors. In such cases, though the condition of the estate is not absolutely hopeless, but only requires some more time, the Court by their action deprive the debtor of the chances of redeeming it; so, in order to make it clear what this reasonable period is to be in the interest of both the proprietors and the Court, I would request the Hon'ble Member to make clear at least the minimum period that the Court should consider to be the reasonable time. I have no objection to withdrawing my motion if I am assured that Government will make a provision to this effect at least in the rules under their rule-making powers.

Mr. F. A. SACHSE: I tried to explain yesterday that this section was framed and introduced in the Bill with no intention at all of making over any estate to trustees or releasing any estate from the Court of Wards, if the liabilities of that estate could be paid off in full within twenty, thirty or even fifty years. The section is proposed to be used in cases where the assets and properties of *zemindars* are considerably less than their total debt. These words come from the United Provinces Act where a similar clause has been in force since 1914 and no practical difficulty has arisen and no *zemindar* has complained that his estate has been released unnecessarily. The United Provinces Act says that estates brought under the Court of Wards management for heavy encumbrances may be sold up even without the consent of the wards instead of releasing them: if the debts and liabilities with which the properties are charged are such as to render their liquidation within a reasonable period impracticable and release is inexpedient owing to contracts or engagements entered into or liabilities undertaken during the superintendence of the Court of Wards.

There too, Sir, there is no definition of what is reasonable time. Therefore, I oppose the amendment.

The amendment was then, by leave of the Council, withdrawn.

The Hon'ble Sir BROJENDRA LAL MITTER: I beg to move that in clause 12 (*ii*), in proposed clause 3 (*1*) of section 23, in lines 7 to 12, for the words commencing "it may, upon notice" and ending with the words "the views of the proprietor and his creditors," the following be substituted, namely:—

"it shall give the proprietor and his creditors such opportunities as it thinks reasonable to come to an agreement regarding the release of the property from the charge of which it is about to withdraw and if any such agreement is reached, the Court of Wards, if it is of opinion that the agreement is valid, shall release the property to the proprietor.

If the property is not so released, the Court of Wards may, upon notice to the proprietor, call a meeting of his creditors to elect not less than two trustees, to administer the property."

This is a purely drafting amendment, Sir, intended to make the meaning clear. So I formally move it.

The amendment was put and agreed to.

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move that in clause 12 (*ii*), in proposed clause 3 (*1*) of section 23, line 7, after the words "it may," the following be inserted, namely—

"unless the Collector attaches the property under *clause* 2."

Sir, if clause 2 is looked at it would be found that if the Court of Wards finds that certain liabilities enumerated in that clause are still outstanding, then the Collector may attach the property and administer it for meeting those liabilities. In clause 3 it is provided that if the Court of Wards thinks that the property is insufficient to meet all the liabilities within a reasonable period, in that case it may call upon the creditors to elect a number of trustees to whom the property may then be made over for administration. Sir, I think that if under similar circumstances the Collector is also empowered to attach the property the power to call upon the creditors to appoint trustees should be subject to the power of the Collector to attach the property. If the Collector proceeds to attach the property under clause 2, then it would be useless to call upon the creditors to elect trustees to administer the property. My amendment, Sir, is, more or less, a drafting amendment, and, therefore, I think, it may be possible for Government to accept it.

Mr. F. A. SACHSE: I am not sure, Sir, whether the mover of the amendment has studied section 2. The words "subject to the right of the Collector to attach" already occur there. Therefore, the estate will not be managed by trustees as long as the revenue or other Government dues are in arrears, which must be collected first. The Court must release before the Collector can attach. Instead of releasing it

vests the property in trustees, and the trustees can arrange to sell the properties while the Collector is making the collections. Clause 2 makes it absolutely clear that the vesting of an estate in trustees does not take away the right of the Collector to attach the property. I oppose the motion.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, may I say one word? Mr. Tamizuddin will see that when an estate vests "subject to the right of the Collector," it will be liable in the hands of the trustees to attachment by the Collector. The Collector will, therefore, carry out everything that Maulvi Tamizuddin Khan is asking for. So, it is not necessary to add these words.

Maulvi TAMIZUDDIN KHAN: Sir, what I was thinking of is that if the Collector chooses to attach a property, what is the good of giving this power to the Court of Wards also?

The Hon'ble Sir BROJENDRA LAL MITTER: The Collector may not attach one bit of property but the whole property.

The amendment was then, by leave of the Council, withdrawn.

Babu JATINDRA NATH BASU: Sir, I beg to move that in clause 12 (*ii*) to proposed clause 3 (*1*) of section 23 in line 9 after the word "property" the following be added, namely:—

"At such meeting the creditors shall have votes in proportion to the debts owing to them respectively. The opinion of creditors to whom three-fourths of the debts of the proprietor are owing shall prevail. The procedure relating to the holding of such meeting shall be laid down by the Court of Wards."

I want, Sir, that some procedure should be laid down as to how meetings should be conducted, and it should be provided that there should be a certain proportion of votes to be recorded.

The Hon'ble Sir BROJENDRA LAL MITTER: As I said yesterday, Sir, I am prepared to accept this amendment. This point was made much of yesterday, and I thought that it might be dealt with in the rules; but since it was specifically raised by Mr. Page, on further consideration, I think that it would be better to put it in the statute itself so that it might be a guidance.

The amendment was put and agreed to.

Maulvi ABUL QUASEM: Sir, I beg to move that in clause 12(*ii*), in proposed clause 3(*1*), of section 23, in line 11, after the word "ascertain," the words "and carefully consider" be inserted.

Sir, it might be said that when the Court of Wards has to ascertain the views of the proprietors and the creditors, it is to be presumed that those views will be carefully considered. But I do think, Sir, that there should be some definite provision in the statute that careful consideration must be a condition precedent, and it should not be a mere matter of discretion on the part of the Court. I do not ask for anything substantive. I only want to emphasize the fact that careful consideration should be given before such discretion is used.

The Hon'ble Sir BROJENDRA LAL MITTER: After all "ascertain" does not mean merely receiving information. In my opinion "ascertain" involves consideration. Therefore, from the drafting point of view, the expression "and carefully consider" is not necessary.

The amendment was then, by leave of the Council, withdrawn.

Babu KISHORI MOHAN CHAUDHURI: Sir, with your permission I would like to make some alteration in my motion. I would put it in the following form:—

I beg to move that in clause 12(*ii*) in the proposed clause 3(*1*) of section 23 at the end the following be added, namely:—

"one of whom should be the representative of the proprietor, and one of the creditors having experience in *zemindari* management."

Sir, I do not think that there will be any objection to accepting this amendment. My idea is that the proprietor should have some hand in whatever arrangements are made by the trustees and the trustees who take charge of the property should have some experience in *zemindari* matters. This is a very modest suggestion and I hope the Hon'ble Member will accept it.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I fully appreciate the object of this amendment, but it is out of place here. After I have explained the matter, I hope Kishori Babu will see his way to withdraw it. I am going to accept amendment No. 70. That amendment says:—

"The proprietor or the creditors will be at liberty to apply to the Civil Court from time to time, as there may be occasion, for such removal or appointment, for the framing of a scheme of administration, or for the termination of the trust and discharge of the trustees." Now, we are at a stage when the control has gone over to the Civil Court and the Civil Court is given the power of removing trustees or of appointing new trustees and also of giving them directions. That being so, it is for the Civil Court to decide who should be trustees or not, and for that purpose either the proprietors or any of the creditors can

go to Civil Court for directions. Why should we, in the Court of Wards Act, make a provision for such a case? When we reach that stage, the Court of Wards Act is no longer operative.

The amendment was then, by leave of the Council, withdrawn.

Maulvi TAMIZUDDIN KHAN: Sir, I beg to move that in clause 12 *(ii)*, in the proposed clause 3 of section 23, after sub-clause *(2)*, the following proviso be added, namely:—

"Provided that the proprietor shall be paid annually out of the income of the property such allowances as the Collector acting under *clause 2* or the trustees elected or appointed under sub-clause *(1)* of clause 3 may consider reasonable."

Sir, when the Collector attaches a property under sub-clause *(2)* or the property vests in the trustees elected by the creditors or appointed by the Court of Wards, I find that there is no provision as to how the proprietor can maintan himself. I think, therefore, that there should be some provision that the proprietor during the period for which the property will remain in the hands of the trustees or of the Collector should be given some maintenance. I am afraid, however, that perhaps my amendment may not be in its proper place but, as I have said, some provision like this should be made.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, in amendment No. 70 which, as I have already said, I am going to accept there is a provision for the framing of a scheme of administration by the Court, and any scheme framed by the Court, as Mr. Tamizuddin knows very well, may make provision for the maintenance of the proprietor. The proper place to go for a direction in that behalf is the Civil Court under whose control the estate lies. The Court of Wards Act is not the proper place for it because as soon as the estate is released the management of the Court of Wards comes to an end. This is a stage beyond that. The proprietor will have to go to the Civil Court for a direction in this matter.

The amendment was then, by leave of the Council, withdrawn.

Babu JATINDRA NATH BASU: Sir, I beg to move that in clause 12*(ii)* to proposed clause 3*(5)* of section 23, the following be added, namely:—

"*(5)* The proprietor or the creditors will be at liberty to apply to the Civil Court from time to time, as there may be occasion, for such removal or appointment, for the framing of a scheme of administration, or for the termination of the trust and discharge of the trustees."

Sir, the provision of sub-clause 3*(5)* of clause 12, which seeks to amend section 23 of the Court of Wards Act, sets out the powers which

the Civil Court is to possess in the matter of dealing with the trusts created under this provision. Sub-clause (5) states that the Civil Court shall have all the powers included in the law of insolvency for the administration of the trust. It is usual in matters of administration that liberty is reserved to the parties concerned to go and apply to the Civil Court as occasion may arise, and directions of the Court may be necessary for the purpose of proper administration of the trust and for the carrying out of the objects of the trust. My amendment seeks to invest the parties concerned in a trust of this nature with the necessary powers, so that the proprietors and the creditors may be enabled to apply to the Civil Court from time to time as occasion arises for the removal or appointment of trustees, for the framing of a scheme of administration, or for the termination of the trust or the discharge of the trustees.

Sir, the framing of a scheme of administration will include, as the Hon'ble Member has just pointed out, the question as to what allowance should be paid to the proprietor for his maintenance and other expenses. With these observations, I commend my motion to the acceptance of the House.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I accept this amendment, and I want only to say that this is in accordance with what is usually done when an administration order is passed by the Civil Court.

The amendment was put and agreed to.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I beg to move that in clause 12 (*ii*), after proposed clause 3 (5) of section 23, the following be inserted, namely:—

"(*5a*) If a creditor be appointed as a trustee of an estate, he shall be debarred from realising his own dues in the first instance and shall not be allowed to realise any amount until and unless the payment of dues of other creditors are paid."

Sir, my reason is that if a creditor be appointed, he will be able to know the ins and outs of the estate. So he will make arrangement for the payment of other dues and then he will take his own dues.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I oppose this amendment because the Civil Court is administering the estate. Therefore, for the distribution of any portion of the estate, the trustees will have to take the directions of that Court. Why should we go out of our way and say what the Court should do or should not do?

The amendment was then put and lost.

(On the motion that clause 12 as amended in Council being put, Khan Bahadur Muhammad Abdul Momin opposed the motion.)

Khan Bahadur MUHAMMAD ABDUL MOMIN: Sir, I thank you for allowing me to speak at this stage which is rather unusual. At the same time I must express my great regret at our mistake that we did not notice what was the significance of the passing of the amendments. However, the refusal of permission to move our amendments has taken away the wind out of our sail; but I feel that I cannot allow this clause to be passed, as it will probably be passed, without a word of protest from this side. I consider, Sir, that this clause is not only most extraordinary but absolutely unfair and unjust. The poor landlords, who on account of their own indiscretion or whatever other reason there may be, seek the protection of the Court of Wards, do so with the hope that in time they would get their estate back free from encumbrances. They do not expect, and in the past they have not expected, that by making over their estates to the Court of Wards, ultimately it may so happen that the Court of Wards will hand over their estates to those against whom they asked for protection, and this is exactly what the Court of Wards is going to do. In the case of minors it is particularly the case. A minor's estate may be indebted, not on account of his own fault but for the fault of his parents, and the Courts of Wards instead of attempting to relieve the minor from his encumbrances, may hand over the estate to the creditors themselves who will immediately liquidate the estate and take away their dues leaving nothing for the minor. On the other hand, the present law says that if an estate has to be released, then the proprietor can make some sort of amicable arrangement by entreaty, or by request make the creditor relent and ultimately give him concession and so forth. Once an estate is taken over by the Court of Wards, it has no power to release the estate if the Court finds this beyond all hope. In this connection I wish to draw the attention of the House to the real genesis of this amending Bill. Last year (what I am saying, I am taking my cue from the report of the Board of Revenue) in the Conference of Commissioners it was found that the Court was under a great disadvantage, and without some sort of moratorium it was impossible for the Court to mange the estate. I am quoting from the report:—

"The matter was discussed at the Conference of the Commissioners in October last and they decided to recommend to Government that the Act should be amended to strengthen the hands of the Court *vis-a-vis* all creditors, secured or unsecured, and at the same time to enable the Court to deal with the claims for interest of rival classes of creditors on a more equitable basis and possibly also to give the Court power to liquidate the estate by gradual sale of the properties."

Two things were asked by the Commissioners—firstly, to give the Court more powers in the management of the estates and against the creditors and, secondly, to give powers to sell properties and liquidate the estates by gradual sale of properties. I may mention that at the

present moment the sale of any property requires the consent of the proprietor himself. What the Commissioners decided to ask Government was for power similar to that in clause 5, namely, moratorium. That is well and good. At that time there was no question of handing over the estates to the trustees or the creditors. All that they wanted was that the Court should have power to liquidate the estate by gradual sale. That power I understand, and I am perfectly willing to give that power to the Court of Wards instead of the power of handing over the estate to those people against whom protection was sought. Therefore, I want to show from this that this clause 12 was never thought of when the original Bill was introduced. It has now been introduced for some reason and what is that reason? I should like to place before the House an example by way of a love drama—Krishna Leela.

Mr. PRESIDENT: Are you sure that it will not lower the level of the debate?

Khan Bahadur MUMAMMAD ABDUL MOMIN: No, Sir. I never do that.

Mr. PRESIDENT: I hope that it will not border on levity.

Khan Bahadur MUHAMMAD ABDUL MOMIN: No, Sir. I am incapable of levity.

Mr. PRESIDENT: Will that be helpful?

Khan Bahadur MUHAMMAD ABDUL MOMIN: It will be helpful to the House. Faithful Brinda in her concern for the affairs at Mathurapuri which were getting into a mess applied to Lord Krishna for some sort of assistance and protection to Mathurapuri - -

Rai Bahadur SATYA KINKAR SAHANA: On a point of order, Sir. I am a Hindu. This Krishna-Leela has got an inner meaning, and I think the Khan Bahadur is going to give a mundane meaning to it as the speaker is accustomed to——

Mr. PRESIDENT: Better not tread on forbidden grounds. The Rai Bahadur must, however, be profoundly grateful to the Khan Bahadur for putting him in his own elements. (Laughter.)

Khan Bahadur MUHAMMAD ABDUL MOMIN: I thought Rai Bahadur Satya Kinkar Sahana would relish it since he is of a poetic

mood. In all seriousness I think that this clause is absolutely unjustified and unfair, and I may say immoral. I therefore oppose it.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, the Khan Bahadur's fears, I submit, are absolutely unfounded. As I have said repeatedly in this House, it is not likely that this clause will come into operation. It is the last resort—and absolutely the last resort. First of all when an encumbered estate comes under the Court of Wards the Court of Wards itself has got power to sell the property from time to time. (A VOICE: No.) Yes, under section 23A when there are Government dues. Then the Court of Wards goes on managing and with the help which this Bill will give the Court of Wards, the Court of Wards will have a freer hand in administering the estate. If, at the end, the Court of Wards finds that it cannot save the estate, then, what is the next step? Before taking any further step the Court of Wards tells the proprietor and the creditors—"We have to release the estate, can you come to some arrangement?" What Khan Bahadur says is that we are denying the proprietor to come to some arrangement with the creditors. We are not doing that: on the contrary, we are giving an opportunity to the proprietor and the creditors to come to some arrangement. In the Bill that opportunity is given. If they do not avail themselves of that opportunity or if they do not come to terms, then and then only the Court of Wards can say: "Now that we cannot save the estate and the proprietor and the creditors cannot agree on any scheme, let the Civil Court do what it likes." It is transferred to the Civil Court through the instrumentality of trustees; the trustee is mere machinery; the control is transferred from the Court of Wards to the Civil Court. That will happen in any case if the creditors go to the Civil Court. If the creditors go to the Civil Court, when they do not get their dues from the Court of Wards, the whole estate will be sold out and the Civil Court will administer the sale proceeds. This is precisely what is being done here. There is really no foundation for Khan Bahadur's apprehension.

The question that clause 12, as amended in Council, stand part of the Bill was put and agreed to.

The question that clause 13 stand part of the Bill was put and agreed to.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: I beg to move that clause 14 (proposed section 48) in class 1, item No. 2, lines 1 and 2, after the words and figures "referred to in section 22, and," the following be inserted, namely:—

"for education of the ward and his son and for periodical religious observances of an obligatory nature either enjoined by the will of the founder of the family or by ancient tradition, and."

Here I refer the religious observances of a periodical nature. In the budget of the scheme the amount to be spent for religious ceremonies has been provided for and the only question would be whether payment would be made in time. Religious ceremonies cannot be performed without ready money and they cannot be done on credit as we have to pay in cash for anything that we purchase for that purpose. We cannot ask our priest to wait for the money nor can we feed beggars on credit and to distribute alms to them on credit. Cash money is absolutely necessary.

In the existing Act the payment of all charges necessary for the maintenance, education and religious observances of the ward and his family has been made the first charge in class I, and only the "payment of such religious, charitable and other allowances.....and allowances and donations befitting the position of the ward's family" has been relegated to the fifth position in class II. There are indeed very cogent reasons for treating the maintenance, education and religious allowances of the ward as the first charge on the property. There are certain religious observances of an obligatory nature, either enjoined by the will of the founder of the family or hallowed by tradition handed down through generations; the disturbances of such sort of religious observances will seriously wound the susceptibilities of the ward and of his family and also the public at large. So this provision of religious allowance should be placed in the same category with the allowance of wards

Mr. F. A. SACHSE: We think we have done sufficient for the proprietor in making the education of the ward himself a first charge, a charge before the payment of revenue and before the payment of rent to the superior landlords. The inclusion of the cost of general religious observances is too vague a proposal. A proprietor may have several sons to educate, but the amendment speaks of one son. The amendment is defectively worded and would cause dissatisfaction to creditors. These charges will be met whenever the estate can afford them in order of priority No. 3.

Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur: Sir, I beg leave to withdraw my motion.

The amendment was then, by leave of the Council, withdrawn.

Maulvi ABDUS SAMAD: Sir, I beg to move that in clause 14, in proposed section 48, in class I, after item No. (3), the following be added, namely:—

"(4) the payment of interest payable under a decree or order of a Civil Court referred to in section 10C."

Section 10C provides that no decree shall be executed for four years and seven years, respectively, if the interest due under such decree be paid in full every year. Section 14 lays down the order in which debts of various classes are to be paid. I do not find under which class the payment of interests on decrees of Civil Court comes. It is clear from the provisions of section 10C that if interest is not paid, the Court will execute the decree. So there must be some provision for payment of interest due on account of a decree and that payment should come within class I.

Mr. F. A. SACHSE: I do not think that many members of this House will agree that interest on any decree should come in class I, that is before payment of rent to superior landlords, cesses and other demands. Decrees may be obtained for unsecured as well as for secured debts. Interest on decrees comes under class II of priority and is quite high up. I oppose the amendment.

Maulvi ABDUS SAMAD: Sir, I beg leave to withdraw my motion.

The amendment was then, by leave of the Council, withdrawn.

Mr. O. M. MARTIN: I beg to move that in clause 14 in proposed section 48, in class IV (*l*), line 4, after the word "clauses," the brackets and letters "(*aa*)" be inserted.

This is purely a consequential amendment due to the insertion of a new item in clause 2.

The amendment was put and agreed to.

The question that clause 14, as amended, stand part of the Bill was put and agreed to.

The question that clauses 15, 16 and 17 stand part of the Bill was put and agreed to.

(The Council was then adjourned till 2-15 p m.)

(After Adjournment.)

The question that clauses 18, 19 and 20 and the Preamble stand part of the Bill was put and agreed to.

The Hon'ble Sir BROJENDRA LAL MITTER: Sir, I beg to move that the Bengal Court of Wards (Amendment) Bill, 1935, as settled in Council, be passed.

The motion was put and agreed to.

The Howrah Bridge (Amendment) Bill, 1935.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, I beg to present the report of the Select Committee on the Howrah Bridge (Amendment) Bill, 1935.

I beg to move that the Howrah Bridge (Amendment) Bill, 1935, as reported on by the Select Committee, be taken into consideration.

The motion was put and agreed to.

The question that clauses 1, 2 and 3 stand part of the Bill was put and agreed to.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, I beg to move that after clause 4 (3) the following clause be inserted, namely:—

"(3a) *After* clause (*ii*) the following proviso shall be inserted, namely:—

'Provided that the tax referred to in clause (*i*), (*ia*) or (*ii*) shall not be levied—

(*a*) on any land, building or holding which is exempt under the Calcutta Municipal Act, 1923, from the consolidated rate, or under the Bengal Municipal Act, 1932, from the rate on holdings, as the case may be; and

(*b*) on any municipal property which is not intended to be let out to tenants or for otherwise deriving an income therefrom;'."

Sir, the object of the amendment which I have moved is clear and requires no lengthy explanation.

Section 8 of the Howrah Bridge Act, 1926, which is now to be amended, provides for the imposition of a tax on lands, buildings and holdings in Calcutta and the other municipalities concerned for the purposes of the new Bridge—as will be seen from clauses (*i*), (*ia*) and (*ii*) of that section.

Under the Calcutta Municipal Act, 1923, and the Bengal Municipal Act, 1932, certain classes of property are exempt, some statutorily, such as burial and burning-grounds, places of public worship, etc., and some may be exempted by the Corporation or the municipality—such as places used exclusively for purposes of public charity.

It was not the intention of Government that lands, buildings or holdings that fall within these exemptions should be subject to the tax imposed for the Howrah Bridge. Clause (*a*) of the proviso makes this intention perfectly clear.

There are also within the municipalities affected by clauses (*i*), (*ia*) and (*ii*) of section 8 of the Act certain municipal properties—owned by the municipalities and used for purely municipal purposes, such as municipal offices, conservancy sheds, quarters of municipal staff let out rentfree, and so forth. It is not the intention of Government that such property used exclusively for municipal purposes should be subject to the bridge tax. Clause (*b*) of the proviso therefore exempts such property.

In this connection it is to be noted that all Government property of whatever description within the municipalities concerned will be subject to the bridge tax. The municipalities therefore will stand in a much better position than Government if this amendment is accepted.

In addition to this, it is to be remembered that the provincial revenues will also provide a sum of Rs. 4 lakhs annually for the purposes of the bridge. The rate-payers of Calcutta and other municipalities concerned are therefore being treated with great consideration—in fact, with considerable leniency.

In view of what I have stated, I hope that Mr. J. N. Basu and Mr. P. Banerji will agree that the amendment I am moving is fair and reasonable and will not press the amendment which stands in their names.

With these words, Sir, I move my amendment.

The amendment was put and agreed to.

The question that clause 4, as amended, stand part of the Bill, was put and agreed to.

The question that clauses 5, 6, 7, 8 and 9 and the Preamble stand part of the Bill was put and agreed to.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, I beg to move that the Howrah Bridge (Amendment) Bill, 1935, as settled in Council, be passed.

The motion was put and agreed to.

The Bengal Water-hyacinth Bill, 1935.

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Sir, I beg to introduce the Bengal Water-hyacinth Bill, 1935.

(Secretary read the short-title of the Bill.)

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: I beg to move that the Bengal Water-hyacinth Bill, 1935, be circulated for the purpose of eliciting opinion thereon by the 4th February, 1936.

It is not necessary for me to emphasise the gravity of the problem of water-hyacinth in this province or the urgent necessity of taking measures for its eradication. These are points on which I do not think that two opinions can be entertained. Nor is the measure which I wish to introduce the first approach made to the problem in Bengal. Nearly 15 years ago Government appointed a committee under the chairmanship of that distinguished scientist, Sir Jagadishchandra Bose; and amongst the recommendations of that committee was one that some form of legislation should be adopted which would ensure concerted action against the weed. Some few years later at a conference at Dacca presided over by my predecessor then in office a further recommendation was made that legislation should be undertaken. The question was raised in this House on a motion by my hon'ble friend Maulvi Tamizuddin Khan during the discussion on which it was explained from these benches that, while Government were not in a position to bring forward legislation themselves, they would receive with sympathy proposals for legislation put forward by private members. Such a proposal was actually put forward but came to nothing.

I do not propose to discuss in detail the reasons which prevented Government from taking action until the present time when many hon'ble members no doubt consider that legislation is long overdue. Briefly, however, Government were unable to take action because no solution could be devised to the problems of finance and method. As regards finance, the assumption made was that enormous sums of public money would have to be spent if any effective result were to be achieved. It has been computed that the eradication of water-hyacinth at Government expense would cost upwards of five crores of rupees, or very nearly one-half the total annual revenues of the province. It was clearly impossible either to allocate such a large sum from the income of the province or to raise it by special taxation. As regards method, the information then available led to the assumption that water-hyacinth could not be satisfactorily attacked by man-handling on a large scale. Other methods were indeed known, but most were in an experimental stage, and none had been used anywhere with complete success or could be so confidently relied on as to justify a considerable expenditure upon it. There was consequently the greatest uncertainty as to the means to be adopted in dealing with the plant.

The impossibility of providing large sums of public money for this work remains. During the past few years, however, experience has shown that substantial results can be obtained without waiting until funds are available for heavy expenditure. We have also learnt that man-handling on a large scale is both possible and productive of excellent results. These facts were first demonstrated in the sister province of Bihar and Orissa. During the years 1928-30 a campaign was conducted in Cuttack on the initiative of the District Officer as a

result of which it is claimed that water-hyacinth has been practically exterminated in that district. This was effected by the strict and universal application of a district board by-law and by the organisation of concerted popular action under strict and continuous supervision by the executive authorities. Similar action was taken during 1933 in the Gopalganj subdivision of Faridpur district and in 1934 and again this year in Brahmanbaria (and later other) subdivisions of Tippera district, in three subdivisions of Faridpur district and in parts of Rajshahi district. The conditions in these districts were in some respects more unfavourable than in Cuttack; but the results achieved prove that the people in areas affected by water-hyacinth will respond to a call for concerted action when there is initiative and enthusiasm to encourage and direct them. They have also proved that, when once enthusiasm has been aroused, concerted action can in one season effect a very great improvement in conditions. Figures for Rajshahi are not available; but as a result of the activities in the Brahmanbaria subdivision, out of some 33,000 acres of land previously under paddy but abandoned to the ravages of the pest, some 15,000 acres was in one year set free for cultivation; the price of such lands rose from Rs. 25 to Rs. 50 per *bigha*; and it has proved possible to recover a considerable proportion of the loss annually resulting from the abandonment of cultivation which was estimated at Rs. 8 lakhs. In Faridpur also some thousands of acres which had been rendered unsuitable for cultivation by the accumulation of water-hyacinth were reclaimed for paddy and on a very much wider area the removal of the weed has resulted in a considerably larger yield being reaped. In all places where action has been taken obstructions to boat traffic have been removed, water which had been rendered foul and noisome has been restored to purity and an improvement in sanitary conditions has resulted from access to water fit to drink and a more copious supply of fish. But perhaps the most encouraging result is the psychological effect of successful action. It has been reported from both Tippera and Faridpur that, as a direct result of concerted effort for the removal of the pest, the people have been inspired with fresh hope, confidence and courage, they have seen an incubus, under which they had been stifled for years, removed by their own efforts; and the result has been that inertness, apathy and pessimism have yielded in their minds to the conviction that effort is worthwhile and that, to some extent at least, it lies in their own hands to ameliorate their conditions.

The Bill which I seek to introduce aims at stimulating this conviction. Apart from certain provisions against the importation, sale, cultivation or "dumping" of water-hyacinth, it proposes and its principal object is to encourage concerted voluntary effort for the eradication of the pest by providing powers to deal with those persons who, by sloth or apathy or from ill-will, are not prepared to join in such concerted action. It provides no powers to compel any person to remove

or destroy water-hyacinth on any land or water but his own: nor will it be invoked to penalise any person until ample notice has been given him to deal with the weed under his own control. In fact, Government contemplate that resort to the sanctions provided in the Bill will be had only when voluntary mass action has been organised and its prospects of success are being jeopardised by such recalcitrancy. The existing provisions of law under which an attack can be made on water-hyacinth are contained in more than one enactment and were not framed to facilitate concerted action such as is contemplated, or with such concerted action in view. Government do not propose to ask the House to hurry through legislation, however strong may be the feeling that there should be no time lost in grappling with this problem. As the Bill is now going to be circulated for eliciting public opinion, I trust the House will have no objection to accepting my motion.

Babu KHETTER MOHAN RAY: Sir, I welcome this measure. Some 15 years ago the Special Officer appointed by Government to make enquiries into the water-hyacinth pest visited our town and addressed the district board and told us that he was convinced that the man-handling process was the only means of eradicating that pest. Though this Bill is long overdue, we welcome it all the same and are glad that it has at last been possible for the Government to introduce this measure in this session. I think, Sir, there is no difference of opinion as to the soundness of the principles underlying this Bill. Sir, long experience of my district, especially of the Brahmanberia subdivision, tells me that it is quite possible to free our country of this pest if concerted action is taken to eradicate it from our land. In Brahmanberia concerted action was taken last year headed by our District Magistrate, Mr. Holland, and the Subdivisional Officer, who themselves showed the way by going into the water and removing the water-hyacinth. All classes of people, pleaders, *mukhtears* and cultivators, as well as *zemindars* joined in this action, and pushed this movement throughout the whole district and the entire movement throughout the whole district and the entire Brahmanberia subdivision was freed from water-hyacinth; and this year the cultivators, as far as my information goes, have reaped a bumper crop in that subdivision alone. I hope, Sir, this movement will spread fast and action will be taken next year, so that the whole country may be freed from the water-hyacinth pest. In this connection I would suggest one thing to His Excellency the Governor and his Government. It is this. The district of Tippera and also Eastern Mymensingh and Dacca are intersected by numerous rivers, big and small, and these rivers have their origin in the Manipur Hills, the Cherapunji and the Himalayas, from whence water-hyacinth pest flows down the river in the rains and invades our district. Sometimes it is very difficult to keep the districts

free from it as they flow down from the hills. Therefore, I would suggest that the Bengal Government should request the Assam Government to undertake similar legislation also. From this it must not be concluded that I am against proceeding with the Bill forthwith. However difficult it may be for the people of Dacca, Tippera and Eastern Mymensingh to keep away water-hyacinth, I can say from my experience of the Brahmanberia subdivision that the water-hyacinth pest can be subdued and if the Assam Government undertake such legislation, it will be very easy to free our country from this pest. With these remarks, Sir, I have much pleasure in supporting the motion.

Mr. NARENDRA KUMAR BASU: Mr. President, Sir, I rise to give my wholehearted support to the principles of the Bill which has been introduced by the Hon'ble Minister for Agriculture. The only few words that I shall permit myself to say is that I should have thought that Government would have shown more expedition and more speed in carrying this measure through the Council and trying to eradicate this pest of water-hyacinth than it has shown in the case of eradicating the other pest, viz., the money-lenders of Bengal. In my submission, Sir, the loss caused to Bengal by the ravages of water-hyacinth is by no manner of means less than that caused by the other pest which this Council and this Government have not been slow to meet and try to eradicate. But the introduction of this measure at the fag end of this session and the motion that it be circulated for public opinion so that it may be relegated for consideration by this Council at some date near about the next Budget session seem to me to show that however good the intention of the originator of the Bill may be, Government as a whole is not very sympathetic towards this problem. I hope, Sir, I am mistaken in this, and I hope that Government will show by their conduct that they are in reality as much anxious to remove this pest as they have been anxious about the other pest for whose eradication they are going to pass a Bill very soon.

Maulvi TAMIZUDDIN KHAN: Sir, I congratulate the Hon'ble Minister on his having at last taken courage to introduce this Bill, although at the fag end of this session. We all know what havoc water-hyacinth has created in Bengal. The people of this country have been demanding some positive action on the part of the Government for a very long time; but for reasons known only to Government, they had not been able ere this to introduce any measure, but, Sir, it is better late than never. In this connection, I would like to say that Government has done well in turning over a new leaf since last year, because, if I may say so, it was in the last year that the Government took it into their head to enlist the sympathy of the people of this country in solving certain problems that affect us

vitally. Sir, I refer to the propaganda for the restriction of jute cultivation which was taken up last year, and it is gratifying to see that that propaganda succeeded to a large extent. We are also glad to find that Government is trying to pursue the same policy in enlisting the co-operation of the people who are mostly affected by water-hyacinth in their proposed campaign to exterminate this pest and I have no doubt that the people will largely respond to the action that Government proposes to take. Mr. Khetter Mohan Ray has already stated the state of affairs in Tippera; as an inhabitant of Faridpur I can also say something concerning the condition of Faridpur. There our former District Officer, who is now a member of the Council—I refer to Mr. Porter—with the help of his subordinates did a great deal of work towards eradicating the pest, and I can say that his efforts met with phenomenal success. If propaganda is carried on on the lines he adopted, I have no doubt that a good measure of success will be attained. In this connection I cannot but refer with complacence to the efforts made by District Officers not only in Bengal but in Bihar and Orissa also, who have taken the initiative in the matter and shown the way how this pest can be eradicated. I again congratulate the Hon'ble Minister in charge and support his motion.

The question that the Bengal Water-hyacinth Bill, 1935, be circulated for the purpose of eliciting opinion thereon by the 4th February, 1936, was put and agreed to.

The Bengal Agricultural Debtors Bill, 1935.

Mr. PRESIDENT: We shall now get on with the third reading of the Bengal Agricultural Debtors Bill.

Babu JATINDRA NATH BASU: I fully appreciate the desire of the Hon'ble Member to grapple with the critical situation that has arisen in this province—I mean the question of agricultural indebtedness. There has been difference with him as regards the actual method to be adopted. But there cannot be anything but appreciation for his endeavour to face the situation and to grant relief where relief is so urgently needed. Sir, there are certain salient points in the measure to which I desire to call special attention. In dealing with questions of finance and questions of rights to property there are certain fundamental laws which have always to be observed in certain respects. Those fundamental laws which have stood the test of time and of difficult circumstances like those through which the agricultural population of Bengal is now passing, have not always been adopted in the provisions of this Bill. I need only refer to a few points to make my remarks clear. There is an attempt to bind some parties by the decision of an award, though they may not have any notice of the proceedings before a Board, and may not have been parties to the proceedings

or to the application. They are to be bound and their claims are to be put off without their being given a chance of being heard. It is the primary right of every man, when any concern of his is being dealt with, to be heard in support of the case that he desires to make out. But clauses 19 and 20 contain provisions which will bind a person though he may not have been a party to the proceedings, and though the proceedings may have gone on without any notice to him and the award may not make a reference to him.

Then, Sir, as regards the priority of debts, there has always been a difference between secured and unsecured debts. A person who borrows money on a security obtains much more favourable terms than a borrower who obtains money without security; and those special and advantageous terms are given because of the security. But the provisions of this Bill in regard to the method of distribution of assets for payment of debts, are such, that the difference between secured and unsecured creditors is for all practical purposes obliterated. That Sir, strikes at the root of a fundamental principle which has always governed and which now governs and which will in future govern the relationship of persons who deal in money or property with one another.

Sir, I may also point out that in this Bill a great deal of the picture has been left to be filled up by rules. We have not here the salutary procedure that there is in England of rules made under a statute being placed before the legislature, and those rules are on the table of the House for a certain length of time, so that the members of the legislature may have an opportunity of going through the rules and to see whether any of the rules is unjust or *ultra vires*. Here we do not have that procedure. In a country like England where public opinion is much more wide-awake, there has been a persistent opposition to administrative affairs being conducted on the basis of departmental rules. No less a person than the Lord Chief Justice of England raised his powerful voice against administration being conducted by such rules. He said that the statute should contain all that is necessary in order to regulate the carrying out of a particular measure of State and it should not be left to the departments to control public affairs by mere rules. But in this Bill, as you, Sir, will have noticed from the clause which sets out the various matters upon which Government can make rules, almost everything is left to rules. Even the question of distribution and of priorities in the matter of distribution is left to rules. That is an extraordinary procedure. That has given rise to the criticism that the Bill need not have gone to the length it has gone, but there might be a short section stating that debts of agriculturists will be adjusted subject to such rules as the Local Government may from time to time make regarding such adjustment. That would have been effective and short and that is what practically this Bill in some measures amounts to.

There is another question, Sir, which ought to have been seriously considered in bringing forward a measure like this and in introducing in it the various clauses which are contrary to all existing canons of human relationship and of legal practice. What I am afraid of is that the necessary finance may be scared away when it becomes necessary. The agriculturists may at this moment have debts and heavy debts. These are relieved. But the debts are not the growth of a day. For the next crop season and later on the cultivator may require money for cultivation and harvesting, and if the sources from which that money is to be derived are shy and do not come forward, then it is not those sources but it is the agriculturist that will suffer. Unfortunately for this province the Government is not in a position to fully finance agricultural operations. It is not possible for Government with its very slender resources and with its borrowing power at a very low ebb to find the money, the very large sum of money, required for financing the cultivation, and the raising and harvesting of crops in this province. What is going to happen? Has the Government given any thought to what may happen by reason of this extraordinary procedure? I will not repeat what my friend Mr. S. M. Bose said the other day that instead of its being a gradual evolutionary procedure it is a revolutionary procedure, as by such an extraodinary measure, you scare away the people, who are ordinarily expected to find the money which is so urgently needed by the cultivators for their seeds and their ploughing and sowing operations and for tiding them over for the time till the next harvest comes. Where is all that money to be obtained from? It is true, Sir, that we have the co-operation movement, and we have great expectations from that movement. But there are certain essential conditions to which Mr. Porter very properly referred the other day in his speech in this House, which have to be complied with before the co-operative movement can be placed on a sound and really working basis.

It will be years and years before the co-operative movement spreads sufficiently for the agriculturists to be in a position to fully avail themselves of the benefits which it can offer. In the meantime, what is to happen? I am looking at it from the agriculturists' point of view. Suppose I am an agriculturist; my whole load of debts is to some extent lightened by an award which spreads the repayment over a certain number of years. The Bill as passed leaves enough land or rather assets for my maintenance. But what about the expenses of cultivation and of harvesting as well as the expenses required for lean years which unfortunately are not rare in Bengal, with her droughts and very frequent inundations. What is going to happen to the poor agriculturist? It is there that I really become anxious. If, on the other hand, a Bill, though not exactly on the lines of the Money-lenders Bill, had been introduced enacting a provision to the effect that when there are debts which the agriculturist is not in a position

to pay immediately, and there is a chance of his being completely ruined, there should be a Board consisting of persons nominated by him and by the claimants in probably equal proportions, as happens in arbitration proceedings throughout the world, and in the case of difference between the arbitrators, nominating an umpire who decides finally. That might have been a real way to carry out the desire which appears to be so dear to the Hon'ble Member, viz., the desire for introduction of the old *panchayeti* system here.

(Here the member reached his time-limit, but was allowed two minutes to finish.)

The *panchayeti* system is an entirely voluntary system where the people of the village have confidence in the persons who constitute the *panchayeti*. The *panchayet* is not appointed by any outside authority, but is appointed by the parties concerned. If the *panchayet* is appointed by the parties concerned, then that *panchayet* will have much greater authority and the decision of such *panchayet* will have greater acceptance than the decision of a *panchayet* imposed from outside. That is a point which ought to have been taken into account. But those Boards are being imposed from outside and with complicated rules, framed under the numerous headings under which rules are to be framed, the numbering of which has exhausted the English alphabet, as that after finishing from A to Z we have gone to AA, BB and so on up to Z and something like that. If things like the settlement of debts in the villages are going to be carried out under a complicated procedure like that, I do not think there is any chance of the Hon'ble Member's desire of coming back to the old *panchayeti* system ever being realised through the instrumentality of this measure.

Maulvi TAMIZUDDIN KHAN: I rise to give my support to the motion of the Hon'ble Member in charge of the Bill that the Bill as settled in Council be passed. It is regrettable that some members of the House have thought it fit to give an opposition to this measure. I still maintain that the opposition to this measure that has been given on the floor of the House is entirely due to misunderstanding, for otherwise I cannot believe that any well-wisher of the country could stand against a measure like this. I frankly confess, however, that this section of the House which has given its support to the Bill generally is not satisfied with all its provisions. It is at best a half-measure. It does not go far enough. The condition of the peasantry in Bengal has become so desperate that in reality a far more drastic step was necessary to drag them out of the quagmire, but circumstanced as we are financially and otherwise, Government could not think of taking any more drastic step than this and compelled by circumstances we

are satisfied even with this moderate measure. I cannot conceive, however, that actually anyone can or should oppose even a modest legislation such as this. Mr. J. N. Basu in his speech to-day has raised various points and has tried to show many defects, that according to him are to be found in this measure. I do not like to deal with all his points because most of them have been very fully dealt with during the detailed discussion on the Bill. As to his last point of appointing or electing the Boards by both the debtors and the creditors, I am afraid his suggestion has come much too late. If this suggestion was given in time and if there was any substance in it certainly Government and the House would have given their proper consideration to the same. But now it is too late to deal with a suggestion like that.

He has raised one important point. It has been said that the operation of this measure will destroy rural credit. The words used by him were that the "necessary finance may be seared away" by the operation of this measure. He also says that if finance is thus seared away, it will be not a boon but a curse to the agriculturists and that agriculture in Bengal would suffer on that account. I refuse to believe that agriculture will suffer by the operation of this measure. It may be true that on account of the operation of this measure money will not be so easily available to the cultivators as it was some years ago. I maintain that the surest way to bring ruin to our cultivators is to dangle before their eyes the prospect of easy loans. We know that during the days of the inauguration of the co-operative movement the people of Bengal came face to face with such a temptation and our agriculturists, improvident and lacking in foresight as they are, fell an easy prey to this temptation and the result has been in most cases disastrous. I submit that if by the operation of this Act money is not as easily available to the cultivators as before that will not be a curse to the cultivators but, on the other hand, it will be a veritable boon to them. It may be said: How will the cultivators carry on if they do not get loans? I will only ask those of my friends who hold this view to look into the past three or four years—the years of economic depression. During these years of depression no *mahajan* has advanced money to the cultivators, but do we not know that in spite of not being provided with loans our cultivators have carried on somehow? Not a single acre of land has gone out of cultivation during these years. That has taught the cultivators that they can do without loans and if in future they can be taught to do without loans by the operation of this measure, I think it will be a blessing in disguise and not a curse as my friend says. I do not believe, however, that my friend's apprehensions will come to be true. I only hope that he may prove to be a true prophet. I do not think that capital will be shy. I rather think money will be unfortunately easily available to the cultivators even under the changed circumstances. The very ground on which my

learned friend Mr. J. N. Basu has thought fit to oppose the Bill is to my mind a ground for supporting it. What increases his pessimism only makes me optimistic. I do hope that by the operation of this Bill a dose of self-help will be administered to the cultivators which they are badly in need of.

In conclusion, I like to congratulate the Hon'ble Member in charge of the Bill for the successful manner in which he has piloted it. In the course of the discussion on this Bill he has given unmistakeable proof of his great concern for the people of Bengal: not only that, he has also demonstrated a thorough grasp of all the various complicated questions involved and on the whole he has done his part with conspicuous ability. It goes without saying that the assistance he has received from the indefatigable labours of Mr. Townend, Mr. Sachse and other assistants has been simply invaluable. We are all grateful to them for the great part they have played in carrying this measure through the Council. With these words I give my wholehearted support to the motion before the House.

Babu AMULYADHAN RAY: Sir, I congratulate the Hon'ble Member on the successful manner in which he has piloted the Bill. It is a matter of great satisfaction that in spite of the opposition of money-lenders and *zemindars* we have at least reached the last stage. Sir, the gloomy picture which we have witnessed during the discussion of this Bill is a revival and repainting of an old picture drawn at the time of the passing of the Bengal Tenancy (Amendment) Act and the Rural Primary Education Act. Unfortunately, Sir, the *zemindars* and the money-lenders and their supporters have proved their inability to make an adjustment between the diverse and clashing interests, even at a time of national crisis, when 80 per cent. of our countrymen, cultivators of land, are groaning under a crushing burden of debt. Sir, the matter does not rest there. One of the *zemindars* of Bengal—Mr. Shanti Shekhareswar Ray—has gone so far as to threaten the Hon'ble Member and say that if the *zemindars* and money-lenders of Bengal are antagonised, then it would be a difficult task to carry on the administration of Bengal. I do not think, Sir, for a moment that the above is the collective opinion of the *zemindars* of Bengal, nor do I believe for a moment that the *zemindars* as a body cherish such a foolish and false idea. We know their strength, and we know the position in which they stand to-day. Unfortunately, Mr. Ray is not here now, but we are not at all afraid of his idle threat.

The second threat that was uttered by Mr. Ray was that His Excellency the Governor would withhold his assent even if we passed the Bill. Sir, everybody knows that the guiding hand of His Excellency the Governor is behind this Bill. When the history of this fair

province comes to be written in future, the administration of His Excellency, his noble deeds for the good and welfare of the people will undoubtedly form a great and glorious chapter in that history. However, Sir, if the *zemindars* of Bengal had really understood their position, this threat should never have come from the mouth of Mr. Ray. Then, Sir, Mr. S. M. Bose has charged the Hon'ble Member with having introduced communism in the Bill, but I would ask Mr. S. M. Bose in all seriousness to say whether the Bill contains any provision destroying individual ownership, or if it contemplates the establishment of the right of society over personal rights and personal income. (Mr. S. M. BOSE: Yes.) No, certainly not. On the other hand, the Hon'ble Member has rightly said that if a remedy is not provided, it would lead to a situation in the country the disastrous results of which we are alarmed to think of. It will lead to a situation in the country which, as I remarked the other day, was witnessed in France and Russia.

Then, Sir, Mr. Jatindra Nath Basu complained a few minutes ago that so many things have been left to the rule-making power of Government. I cannot understand why a gentleman of his position should have advanced such an argument. An hon'ble member of his position and status should not have advanced an argument like that. Why can't you trust your future Minister who will frame these rules? He will be responsible to the legislature and it is he who will frame these rules. (Mr. S. M. BOSE: The rules will be framed not by a future Minister, but by the present Hon'ble Member in charge of a reserved department.) If you cannot trust your own men, then do not cry for democracy and all that. I think, Sir, that I should not take much time of the Council, but, in conclusion, I must submit that for the noble deed which the Hon'ble Sir Nazimuddin has done for the good and welfare of the country, his name will certainly go down to posterity, and, I hope, along with him the names of Mr. Sachse and Mr. Townend will be remembered by the next generation with gratitude. With these words, Sir, I support the motion.

Maulvi SYED MAJID BAKSH: It seems, Sir, that I was singularly unfortunate in not being present in this House when the speeches that have been referred to by the speakers to-day were made, but nevertheless I should not be behindhand to anybody in offering my congratulations and felicitations to the Hon'ble Member and his Secretary, the Rural Development Commissioner, who have framed this Bill and have piloted this Bill through rocks and waves and have at last landed it safely into port. This is a measure which, as has been remarked by many of my friends, was badly needed in the present circumstances. Sir, I may speak a word of wisdom to those of my friends who think that this Bill will bring something like revolution in this country. I

may quote to them the old, time-honoured, story that unless you preserve the hen that lays the golden eggs how can you expect golden eggs from her? So, do not be too greedy, don't be too exacting, while the source and repository of your strength and revenue are withering away. I am told, Sir, that some members have suggested that this Bill smacks of communism. Sir, I admire the knowledge of communism of those members. I think, Sir, they have forgotten their Karl Marx, and I thought, Sir, that by the time these speeches were made the ghost of Karl Marx was shrinking away from them. It is known, Sir, only to the (barest?) student of socialism that communism is based on anti-capitalism; it seeks to do away with capitalism altogether. Accordingly, I would like my friends to point out a single reference in this Bill which aims at doing away with capitalism. On the other hand, the Bill secures to the capitalist a firm foothold in the land; the Bill secures to the creditor his money and of course his interest but minus his pound of flesh; it secures to the *zemindars* the payment of rent that is due to them, not to speak of the rent that will fall due hereafter. It rescues the tenant, who is the hen that lays the golden eggs, from a difficult position and a quandry and the mess of economic depression into which, unfortunately, for no fault of his own, he has fallen. And with what object? With the single purpose of making him live and work only, so that others who derive income from the productions which he brings out from the soil may live and thrive. That, Sir, is the sole intention of this Bill. If we by curtailing the heavy rate of interest of some persons do really good to the rest, I think that is an attempt which ought to be welcomed. After all, Sir, the Bill is going to do the greatest good to the greatest number. For a few money-lenders the number cannot be made to suffer. I think, Sir, that as a lawyer Mr. S. M. Bose has come to know by this time the well-known principle of the greatest good of the greatest number. A few may be made to suffer, but not the number. When I say that a few may be made to suffer, I say it in this sense that they will not be able to get their pound of flesh. As regards the inequitable laws and the Courts, I say, Sir, in the presence of this very Council that "men of the Courts" are themselves money-lenders. I make bold to say that if this Bill is going to be given a chance, then the doubts of everybody will be set at rest, and all the fears and all the bogies of communism that have been raised by my friends will soon disappear and vanish into thin mist, and the prosperity that will come over the land will give them a fair return on their investment and they will have no reason to grumble.

As regards the technical and legal points in this Bill, in the course of discussion on the consideration of the Bill I have referred to them often and again and it is unfortunate that my friends who heard them then but could not reply to the legal points now rise up and repeat the same platitude over and over again and raise objections which have no

substance. Sir, the point has been raised that the man who has not got notice is going to be bound by this Bill, as if, Sir, there is no such provision in the law anywhere. I would refer my friends to the law of insolvency that is already in existence. I think, Sir, I need not point out to my lawyer friends that judgment of a Court in its insolvency jurisdiction is a judgment in rem and a judgment in rem is binding upon all persons whether they have notice or not. If a person is declared insolvent, say, by any Court in Rangoon, his creditor who may happen to live at Lahore and who may not have been a party to it and may not have any knowledge of the proceedings is equally bound by it, so that, that is the same principle that has been observed in this Bill. So long, Sir, the tenants had no law to help them when they were insolvent. This law is simply an extension of the law of insolvency to the tenants. What is there to grumble at? To grumble is merely to ignore the legal position that already exists. There are some men, Sir, who are in the habit of putting a telescope to the blind eye. They shut their eye, Sir, to the obvious thing and they think therefore that all the world is dark, because, Sir, they cannot see when they shut their eyes. That, Sir, is the attitude that they have taken. The world is not really dark, but if they deliberately shut their eyes, how can they see.

However, Sir, I need not go at great length in support of this Bill because much has been said already. I would not like to take the time of the House further. All I need say is that this is one of the recovery measures taken by Government at long last. To whomsoever it may be due, he deserves all our credit and our gratitude, and with the fullness of heart that is possible for one who is expressing his gratitude, I thank him for a measure which will do enormous good to the agriculturists whose position has always been to produce and not to use them, to feed others while they themselves with their children remain starved, to give interest at fabulous rates—rates unknown even to the ancient worlds that were famous for usury, and not to have anything left for themselves! If my friends who have long been nurtured under this law of usury almost to any length think that this state of affairs can continue long, they are mistaken; that, Sir, is not because of Mr. Townend or others, but because the world has progressed and has spun round the track of centuries in years. They find before their eyes that there is socialism in almost all the progressive countries of the world and there is no gainsaying this. The tenants may not read, the tenants may not learn them, but it is difficult to hide the truth from them once it has crossed the land. Somehow or other it filtrates and reaches the persons who are to be benefited by it. This thing in filtrating into the minds of the agriculturists changes their attitude towards the Government which professes to be their protectors into a sense of hostility. Do my friends want that this sense of hostility

of a large section of the people should continue towards the Government? If they do not, then this Bill goes a great way towards changing that attitude and it is necessary to do so for all of us. Trade is not thriving, lawyers get nothing and every business is at a standstill. Sir, I have already referred times without number to the recovery plans adopted by other countries, and I do not like to refer to them now. If my friends are sincere, they might turn their eyes towards those measures that have been adopted by the other countries of the world. Sir, this country alone is perhaps the only one in which socialism has made very little progress. Under a much stronger Government socialism has progressed with giant's strides. We are fortunate in that respect. Our people are very sober, our people are not led away by catch phrases and loud-sounding slogans. We are fortunate that we live in the midst of people whose temperament is so religious and their teaching is such as to make them bear things with one sense, namely, that it is their lot. Sir, in other countries that theory has been discarded. The people there demand living wages, they extract and actually wrench such wages out of the capitalists who have all along thrived upon them. This they will eventually do, if my friends go on in their way. It is a protection not to the tenants so much as towards those parasites who live upon them and those vampires who have sucked their life blood and should be ashamed of it.

Rai Bahadur SATYA KINKAR SAHANA: Sir, I beg to offer my congratulations to the Hon'ble Member and his collaborators for piloting this Bill through stress and storm to a safe haven. I am sorry that I cannot extend my wholehearted congratulation for a part of my heart is filled with anxiety for the future proper working of the Bill and for the desired relief to the agriculturists. Perhaps this expression of concern for the agriculturists will draw forth from some of my friends the remarks that this concern is only lip deep or it is merely crocodile tears. I know, Sir, that all creatures have their tears and crocodiles also have their tears. But I come from a dry country where crocodiles are almost as rare as the flower of the fig tree, i.e., *dumurer ful*. I have no knowledge about the ways and the tears of crocodiles, and I propose to leave that to my friends who have to live for 4 or 5 months on water almost lock in brace with crocodiles. I notice in the Bill some decaying seeds, some fungi, which, I fear, will bring in ruin to the Bill in future, and I will try to mention some of them. The Bill is based on pillars—at least one of the strongest pillars of the Bill is the assumption of the Hon'ble Member that the rural people are very simple and almost as pure as the mountain snow. Perhaps, Sir, I know that two great divisions of the people have been prepared now-a-days; they are the rural people and the urban people. The urban people coming into closer touch with civilisation have imbibed all the vices of civilisation, but the rural people also have imbibed those vices from

the urban people. Many centuries ago our sages said যদ্‌যদাচরতি শ্রেষ্ঠস্তত্তদেবেতরো জনঃ: All men try to imitate their betters. We all know what is to-day the mentality of the urban people will permeate to the lower stratum of rural people to-morrow. The rural people are not so simple as the Hon'ble Member assumes. The Civil Court records show that cases of forgery, perjury and all those things are found to be common amongst the rural people. Therefore, I think that his basing of the Bill on the assumption that these rural people are simple shows that he was in a secure mood of mind and security is man's chiefest enemy. Perhaps through that door of security some looseness in the clauses of the Bill has crept in and this will be one of the seeds of the destruction of the Bill.

Secondly, Sir, there are so many discriminations—discrimination between a creditor and a debtor, between a creditor and a creditor and a debtor and a debtor—all sorts of discriminations. The other day a jesting friend of mine was saying to me that the members of the B. L. C.—the abbreviation B. L. C. he jokingly explained as Bad Livelihood Cases and not Bengal Legislative Council—have so indiscriminately used discrimination—the valuable human faculty—during the last few weeks that if for the remaining life of the Council they proceeded indiscriminately nobody will accuse them of indiscrimination. This discrimination will be another seed of destruction, another fungus.

Sir, the third point that I would like to mention is too much imitation. Unfortunately for us Bengal has nowadays become an importing country. In our younger days Bengal was an exporting country and used to export politics, religion and literature to other parts of the country. But nowadays unfortunately Bengal has become a pure and simple importing country. We import our Surgeons-General, we import our Health Officers, we import the Principals of our Medical Colleges from places outside the province. When we require an engineer to repair a damaged weir, we import him from the Punjab. When we cry for the improvement of our cattle, the Hon'ble Minister in charge of Agriculture imports a few Montgomery and Hissar bulls from the Punjab; and when we cry for the scaling down of the load of indebtedness of the agriculturists, the Hon'ble Member imports a Bill from the Punjab or the prototype of a Bill from the Punjab. How these Bills or these bulls will work is to be left to the future. I am not a prophet, Sir, and I am not possessed of the sight of a prophet and cannot say what seeds will grow and what will not, and I leave that to the future, though something whisphers into my ears: "Bengal is not Punjab." I only wish that the Bill be successful, that the poor agriculturists get some relief and as an old man, I bless the Bill and I wish it God-speed. With these words I support the motion of the Hon'ble Member.

Maulvi RAJIB UDDIN TARAFDER delivered a speech in Bengali supporting the motion of the Hon'ble Member. The following is an English translation of his speech:—

Sir, I like to say something on the final discussion of the Indebtedness Bill and so pray for patience from the President and members of the House.

I thank Government first and the Hon'ble Sir Khwaja Nazimuddin afterwards because they have found their way to pass such a Bill. The governments from generations to generations have turned deaf ears to the prayers and entreaties of the tenants and debtors and I am glad that this Government have at long last risen to the occasion and granted such a prayer.

The Bill was first drafted by Government and then amended in the Select Commmittee, but in spite of these amendments many defects crept there and we hoped that they will be remedied in this Council, but that was not done.

Such a thing cannot be expected in this Council, because anything which Government like to bring is passed by sheer force of majority and to my mind, Sir, if a Bill is brought by Government, that a foot of every man should be chopped off, it will be passed by the majority.

Amongst many defects, Sir, section 27 of the Bill deserves special mentioning. It is laid down in this section that a debtor to a co-operative bank will get no relief without the sanction of the authority. Sir, to my mind Government has shown selfishness to the extreme here; while ordinary money-lenders, joint stock companies and *zemindars* will come under this Act Government will not. We tried our best to remove the clause and met Sir Nazimuddin and even went to Mr. Carter to try to remove the odious clause, but, Sir, to no purpose. To quote the poet, a happy man cannot understand the misery of the poor. No body paid any heed to the prayers of the poor.

However, what has been done cannot be undone. In spite of the defects, if the Government enforce the Act immediately, then the people will get some relief, at least otherwise, it would awaken a sleeping tiger to catch its prey. If Government have a mind to do good to the poor, then I ask with all solicitude to enforce it at once. With these few words, Sir, I support the motion.

Mr. P. BANERJI: Sir, I am not one of those that will thank anybody in anticipation. It has to be seen whether this measure that has been piloted by the Hon'ble Member will work or will become a dead letter, as we know from past experience of all his endeavours that had been hurried through this Council times without number. Yet at the time of thanksgiving one feels a little bit nervous to criticise in the proper way the mischievous measure that has been piloted through this House. I call it mischievous advisedly for the simple reason that

Government, as has been told by several members in this House today, at the time of thanksgiving, have a motive behind it. Government know very well how to butter its own bread and in order to do that it is necessary that they must come to the rescue to a certain extent of the landowning aristocracy of this kind. At the same time, time has come when the political agitation in the country is waking up the masses, to mislead them to a certain extent. It seems to me that that is the ulterior motive in order to crush the political aspirations of the people. They also wish that the middle class people must also be crushed. That is the whole object of the Bill. That being the case, I ask the members who support this measure in theory to say whether Government is at all sincere in a measure like this. It is not. The supporters of this Bill as well as the Hon'ble Member have tried to impress upon us the important fact that as a result of the passing of this Act the rural credit will not be disturbed. May I ask the Hon'ble Member how are they going to maintain the rural credit in the absence of any such provision in the Bill? The Hon'ble Member in his statement the other day said that his whole object in introducing the Bill is to reduce the burden of rural indebtedness and to improve the purchasing power of the masses. That is what the foreigners also say; they too want to increase the purchasing power of the masses in India so that they can live in peace. Now, let us see whether that is possible and at the same time to consider whether credit will be forthcoming in support of this measure. Maulvi Tamizuddin Khan has remakred that what has been said by Mr. S. M. Bose and Mr. J. N. Basu have all been said under a certain misunderstanding. I say, Sir, that the misunderstanding is rather on the other side; on the side of the supporters of the Hon'ble Member. And I fail to understand how is it that you can expect that the persons whom you have once turned away will come and help you. In the course of the discussion of the amendments on this Bill the Hon'ble Member gradually realised the dangers ahead and, therefore, by bringing so many amendments himself, he was trying to patch up his Bill, but he had already patched up his boat in such a way that it could not but be sinking, so that the result will be that afterwards the whole award will be in the air. And after the award if the agriculturists' rent be in arrears or if any suit is brought against them for any further debt, they will get no credit and their properties will be sold up. In that case what is the Hon'ble Member going to do? Nothing whatsoever. The Hon'ble Member admits that the relief will be only temporary relief, but even admitting for the sake of argument that it is temporary relief, the nett result will be greater hardship on the lot of the poor people in the countryside, and in this connection I am reminded of a poem by the great poet Tagore,

বিদায় করেছ যারে নয়নজলে,
এখন ফিরাবে তারে বল কিসের ছলে ?

Those whom you have turned away in tears, how can you ask them to come back? You have once turned away the creditors, and with what face can you you ask them to come and help you? Nor will they come back: so that the result will be hopeless, chaos in the country-side. If the Hon'ble Sir Nazimuddin had been appointed a dictator by his supporters, then he could have brought up all sprts of legislation and bidden good-bye to all law. To deal with an abnormal situation, he could have taken drastic measures as was pointed out by Maulvi Tamizuddin Khan and as has been done by a dictator elsewhere, but, Sir, that is not yet the situation here in Bengal.

Babu HEM CHANDRA ROY CHOUDHURI: I have a great difference of opinion as regards the policy and some of the principles and procedure adopted in the Bill, but I do not agree with the opinion of those who think that the Bill will not be of any good either to the debtors or the creditors. Sir, as regards the policy underlying this Bill, I am of opinion that the Government was not right to impose the burden of relieving the debtors of their debt solely on the creditors, as if the creditors alone are responsible for this huge burden of debt. This huge burden of debt is due to many factors and Government also has a duty to extend its helping hands to the debtors. Without doing so, the Government has imposed the whole responsibility on the creditor, that is how Government wants to relieve the debtors of their debts, only by curtailing the dues of the creditors. It would have been better, as I have already suggested while discussing some of the provisions of the Bill, if the Government had advanced some money to the debtors for paying off at least a portion of the debts due to the creditors, because some of the creditors are not in a better position than that of the debtors, as some of them have themselves borrowed money from other creditors in order to lend it to the agricultural debtors. Under this Bill these creditors will not get any relief against their debt.

Then, Sir, as regards some of the principles about which I have great objection, I would only enumerate three. First of all, Sir, it is very unjust to compel the secured creditors to accept the terms offered by the unsecured creditors because it is well-known that the position of the unsecured creditors is very insecure: they may not get anything if the full claim of the secured creditors be enforced—I mean by full claim the principal amount with a very reasonable amount of interest. So unsecured creditors may agree to accept whatever they may get, whereas there is no reason why the secured creditors should be agreeable to accept their terms because by reason of their security their position is secure.

Then, Sir, another principle which has been accepted by Government is that the creditors will not be able to touch the one acre of land of the debtor which is homestead, though that land has been

mortgaged to a creditor, *i.e.*, a secured creditor will not be able to touch a debtor if he has only one acre of land and that is his homestead. It is not uncommon that this debtor might have purchased this one acre of land and his homestead with the creditors' money; hence, it is very unfair and unjust not to allow the creditor to touch that land for the realisation of his debt.

Then, Sir, thirdly, there is no provision in the Bill by which a landlord or a creditor may realise the cost of the suit if that suit is stayed by a Board on the petition of a debtor. I think in many cases it may happen that the creditors and the landlords will have to wait for some time and then without going to the Board they will go to the Civil Court because if they go to the Board they will not get any relief, if the debtor does not co-operate as by absenting himself from the Board he may frustrate the action of the landlord or creditor. So without losing any time by going to the Board, they will naturally go to the Civil Court and if they go to the Civil Court, then the debtor may approach the Board and the Board will then issue a notice to the Civil Court for staying the proceedings of that suit. But there is no provision in the Bill whereby the plaintiff can be paid his costs. I raised that point, but I am sorry the Hon'ble Member in charge of the Bill pointedly and in a straightforward way gave the answer that the landlords are not making any sacrifice, so it is very natural it will not harm them if they lose the costs. Landlords have not got one or two tenants; they have tenants in thousands and if in thousands of cases they have to lose the cost, I think it will mean a tremendous amount. As I have already said, I do not agree with those who think that the Bill will not help either the debtor or the creditor. It will evidently help the debtor because his debt will be cut down; it will also help those creditors who are not vigilant or who are financially weak. It is known to everybody that there are many creditors who cannot go to the Civil Courts to institute suits for want of sufficient funds. So it will be of some use for them. There are also another class of creditors, for example, widows, minors and ordinary people who have no knowledge of the Civil Court or who do not want to go to the Civil Court for incurring so much cost or who are not vigilant about the doings of the debtor and other creditors of the debtor. It will also be of great help to them. But what I propose to point out to the Hon'ble Member is that the success of the Bill will depend on the spirit with which the Government will work out the Bill. A great power has been reserved under the rule-making power with the Government and if Government be guided by a proper spirit I think there is no reason why it should not be successful. Even a cursory reading of this Bill gives one an idea that the creditors are so many criminals, whereas the debtors are like so many weak lambs. I would like to tell the Hon'ble Member that that is not the actual state of things, because there are a number of debtors who in Civil Courts or outside commit perjury. Of course,

it cannot be said at the same time that all the creditors are so many honest people, but if we compare these two classes of people we find that the creditors are more honest than the debtors. Every precaution has been taken in providing many clauses in the Bill against the supposed and fanciful intrigues that may be committed by the creditors, but there is no provision to guard against fraud that may be committed by the debtors; for example, clause 20. With regard to that clause I moved an amendment that the Government should make such a provision whereby the properties of the debtor may be attached for the period during which the creditor is not allowed to execute his decree. That restriction is very necessary because if the debtor gets time and the creditor is not allowed to execute his decree, it is very natural that the debtor will make an attempt to make a *benami* transfer of his property in order to deceive his creditor who has not accepted his term of agreement. If the Government in making the rules take into consideration both the sides, that is, the difficulties of the creditors and the debtors, then I think there is no reason why this Bill should not work well.

Mr. PRESIDENT: Order, order. The Council stands adjourned till 2-15 p.m. on Friday, the 20th.

Adjournment.

The Council was then adjourned till 2-15 p.m. on Friday, the 20th December, 1935, at the Council House, Calcutta.

Proceedings of the Bengal Legislative Council assembled under the provisions of the Government of India Act.

THE COUNCIL met in the Council Chamber in the Council House, Calcutta, on Friday, the 20th December, 1935, at 2-15 p.m.

Present:

Mr. President (the Hon'ble Raja Sir MANMATHA NATH RAY CHOWDHURY, of Santosh) in the Chair, three Hon'ble Members of the Executive Council, the two Hon'ble Ministers and 82 nominated and elected members.

Adjournment motion.

Mr. PRESIDENT: Gentlemen, the following order has been passed by His Excellency the Governor on the motion for the adjournment of the business of the Council:—

ORDER.

I have considered the terms of the notice of motion for adjournment of the Legislative Council given to-day. The matter to be discussed, being one in regard to which Government have no information except such as might be gleaned from the columns of the daily press, and in regard to which, further, they have neither power nor responsibility, clearly cannot be held to be primarily the concern of the Local Government and I, therefore, consider it my duty to disallow it in virtue of the powers vested in me under Rule 22(2) of the Bengal Legislative Council Rules [section 71(2) of the Bengal Legislative Council Rules and Standing Orders].

The motion is disallowed accordingly.

(Sd.) JOHN ANDERSON,

Governor of Bengal.

The 19th December, 1935.

STARRED QUESTIONS

(to which oral answers were given)

Communist prisoners in Alipore Central Jail.

*52. **Maulvi MUHAMMAD FAZLULLAH:** (*a*) Will the Hon'ble Member in charge of the Political (Jails) Department be pleased to state whether it is a fact that on the 17th July, 1935, the prisoners of the Alipore Central Jail, who were convicted for sedition under the Press Act in connection with the labour movement, were beaten by the jail authorities at the "case table" in presence of the Superintendent of the Jail?

(*b*) Is it also a fact that after the said beating these prisoners were punished by the Superintendent with three months' solitary confinement with bar-fetters?

(*c*) If the answer to (*b*) is in the affirmative, will the Hon'ble Member be pleased to state the names of such prisoners and the reason for the punishment?

(*d*) Is it a fact that as a result of the said assault some of the prisoners received serious injuries?

(*e*) If the answer to (*d*) is in the affirmative, will the Hon'ble Member be pleased to lay on the table a complete list of those assaulted and the nature of their injuries along with the present conditions of their health?

(*f*) Will the Hon'ble Member be pleased to state why just after the aforesaid prisoners were assaulted and punished an alarm bell was sounded and three shots were fired inside the jail compound?

(*g*) Is it a fact that as a protest against the assault and the punishment the aforesaid prisoners resorted to a hunger strike?

(*h*) Is it a fact that they sent out two petitions, one to the Additional District Magistrate, Alipore, and one to the Inspector-General of Prisons, Bengal, complaining to them about the conduct of the jail authorities?

(*i*) Will the Hon'ble Member be pleased to state whether the hunger strike is still continuing?

(*j*) If the answer to (*i*) is in the affirmative, what is the condition of health of the prisoners at present?

(*k*) Will the Hon'ble Member be pleased to state what steps the Government have taken or are contemplating to take in this connection?

MEMBER in charge of POLITICAL (JAILS) DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) No. Certain communist prisoners who were brought to the "case table" where jail offences are investigated by the Superintendent refused to sit in file and were made to do so, but they were not beaten.

(*b*) and (*c*) The following prisoners were punished with three months' separate confinement and bar-fetters for shouting revolutionary and communist slogans in jail on the morning of 17th July, 1935:—

(1) Sri Narayan Jha.

(2) Phani Datta.

(3) Saroj Mukherjee.

(4) Samsul Huda.

(5) Monoranjan Roy.

(6) Nani Gopal Sen Gupta.

(7) Jyotirmoy Nandi.

(8) Jiban Kanai Pal.

(9) Madar Bhai.

(10) Abdul Rahim.

(*d*) and (*e*) Do not arise.

(*f*) A normal alarm practice parade happened to be held just then; it had no connection with the incident referred to.

(*g*) Yes.

(*h*) Petitions were submitted to the Inspector-General of Prisons but not to the Additional District Magistrate.

(*i*) The hunger strike lasted from 17th July, 1935, to 22nd July, 1935.

(*j*) Does not arise.

(*k*) Government do not consider that any action is called for.

Judicial Standing Committee.

*53. **Maulvi ABUL QUASEM:** Will the Hon'ble Member in charge of the Judicial Department be pleased to state—

(*i*) the number of times a meeting of the Judicial Standing Committee was held during each of the years 1932, 1933 and 1934; and

(*ii*) the reason why no meeting of the said Committee has as yet been held during the current year?

MEMBER in charge of JUDICIAL DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*i*) Nil.

(*ii*) There has been no occasion for consideration of any major question of administrative policy or new scheme involving large expenditure or any other matter of sufficient importance on which the Committee could be usefully consulted.

Maulvi ABUL QUASEM: Will the Hon'ble Member be pleased to state if the Judicial Department issues an Annual Report?

The Hon'ble Sir BROJENDRA LAL MITTER: Not a separate report, Sir, but it forms a part of the Annual General Administration Report.

Maulvi ABUL QUASEM: Why is that report not laid before the Standing Committee?

The Hon'ble Sir BROJENDRA LAL MITTER: I should suppose, Sir, that these reports are available to everybody.

Maulvi ABUL QUASEM: Is it not a fact that these annual reports are, by a mandatory rule, required to be placed before Standing Committees?

The Hon'ble Sir BROJENDRA LAL MITTER: I take it that there is such a rule.

Maulvi ABUL QUASEM: In that case, why is the rule not observed?

The Hon'ble Sir BROJENDRA LAL MITTER: That rule presupposes that the Standing Committee is in existence; if, however, it is not in existence, it cannot be placed before it.

Mr. SHANTI SHEKHARESWAR RAY: Is there a Standing Judicial Committee of this Council?

The Hon'ble Sir BROJENDRA LAL MITTER: Not that I am aware of.

Mr. NARENDRA KUMAR BASU: If the Hon'ble Member will please enquire of the Secretary to the Legislative Council or just look at the last page of the list of members of the Bengal Legislative Council, he will find that a Standing Committee of the Judicial Department has been in existence for the last six years, and that it has never been not in existence.

The Hon'ble Sir BROJENDRA LAL MITTER: I shall certainly enquire.

Mr. SHANTI SHEKHARESWAR RAY: Will the Hon'ble Member kindly tell us who is in charge of the Judicial Department?

(No answer.)

Mr. P. BANERJI: Will the Hon'ble Member kindly tell us whether the Hon'ble Sir Brojendra Lal Mitter is in charge of the Judicial Department?

(No answer.)

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. Is the Hon'ble Member entitled to refuse to answer a question?

Mr. PRESIDENT: When he does not give an answer, you must take it that he is not inclined to answer it.

Mr. NARENDRA KUMAR BASU: Is the Hon'ble Member aware that apart from the General Administration Report of Bengal, annual reports on the administration of civil and criminal justice of the province are issued in two separate volumes?

The Hon'ble Sir BROJENDRA LAL MITTER: That may be so, Sir, but the previous question referred to the Judicial Department of Government.

Dacca-Aricha Road.

*54. **Rai Bahadur SATYENDRA KUMAR DAS:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(*i*) whether experts so far consulted by Government have definitely advised Government that an all-weather motor road between Dacca and Aricha would be impracticable from the engineering viewpoint; and

(*ii*) whether other objections have been received from the department concerned as to the possibilities of increase in malaria in the areas around the road embankments?

(*b*) Is the Hon'ble Minister aware of the persistent demand from the general public for quicker means of transit from Dacca to Goalundo than there are at present available?

(c) Are the Government considering the desirability of appointing a special committee of experts, not necessarily recruited entirely from this province, to re-examine the issues involved and submit a report on the feasibility of alternative schemes for the consideration of Government at an early date?

MINISTER in charge of LOCAL SELF-GOVERNMENT DEPARTMENT (the Hon'ble Sir Bijoy Prasad Singh Roy): (a) (i) No.

(ii) Yes.

(b) Yes.

(c) No. But the experts of Government have the question of Dacca-Aricha Road under consideration.

Rai Bahadur KESHAB CHANDRA BANERJI: Will the Hon'ble Minister be pleased to state when Government are likely to come to a final decision in the matter?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: As early as possible.

Rai Bahadur KESHAB CHANDRA BANERJI: Will Government come to a decision before the end of the financial year?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: It is very difficult to give a definite time-limit.

Director of Public Health, Bengal.

***55. Maulvi AZIZUR RAHMAN:** Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(i) the total number of applications received for the post of Director of Public Health, Bengal, which was recently advertised for; and

(ii) the number of applications received from Muslim candidates?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (i) Eleven.

(ii) One.

Alleged distress in Khulna.

***56. Maulvi ABUL QUASEM:** (a) Is the Hon'ble Member in charge of the Revenue Department aware—

(i) that owing to insufficient rainfall there has occurred a failure of paddy crops in large areas of the Satkhira and Sadar subdivisions of the Khulna district;

(*ii*) that there is acute distress among the people in those areas, particularly among tenants of small holdings and labourers?

(*b*) If the answer to (*a*) is in the affirmative, what measures do the Government propose to take to relieve the distress, and when?

MEMBER in charge of REVENUE DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) (*i*) Yes, of winter paddy.

(*ii*) No acute distress is noticeable yet, but the situation is admittedly serious in some localities.

(*b*) Local enquiries are being made, the situation is being carefully watched, and relief measures will be taken as soon as the necessity arises.

Waterways of Mymensingh district.

*57. **Babu SATISH CHANDRA RAY CHOWDHURY:** (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware—

(*i*) that the river Brahmaputra on which the town of Mymensingh stands is the main waterway running through the district of Mymensingh;

(*ii*) that most of the other main channels which serve the northern and eastern part of the district either as channels of communication or as drains are dependent on the said Brahmaputra for their supplies of water;

(*iii*) that the river Brahmaputra has silted up in many places, particularly at its junction with the Jumna, resulting in the forcing down of all the flood-waters of Upper Assam along the course of the Jumna causing frequent inundations of both its banks as also the drying up of the channel of the Brahmaputra; and

(*iv*) that most of the other waterways of the district, e.g., the Nursunda in Kishoreganj and the Katchamatia in Iswarganj, which are dependent on the said Brahmaputra river, have also either dried up or become stagnant creating insanitary conditions and bringing about deterioration of the soil?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Member be pleased to state what steps, if any, the Government have taken so far to resuscitate the said river Brahmaputra either completely or partially to meet the needs of the district?

(*c*) Is it not a fact that Alhadj Nawab Bahadur Sir Abdelkerim Ghuznavi, of Dilduar, the then Irrigation Member of the Government, promised to carry on regular investigation and to station an officer of the department permanently at Mymensingh for the said purpose?

(*d*) If the answer to (*c*) is in the affirmative, will the Hon'ble Member be pleased to state—

(*i*) whether any officer of the Irrigation Department was stationed at Mymensingh;

(*ii*) if so—

(*1*) how long did he stay there,

(*2*) what investigation and works did he carry on, and

(*3*) whether the said officer submitted any report to the Government of his works in Mymensingh?

(*e*) If the answer to (*d*) (*ii*) (*3*) is in the affirmative, will the Hon'ble Member be pleased to lay on the table a copy of the said report?

(*f*) Is the officer mentioned in (*d*) still working in Mymensingh?

(*g*) If the answer to (*f*) is in the negative, when and why has he been withdrawn?

(*h*) Is it in the contemplation of Government to place an officer of the department again in Mymensingh for study and work in connection with the problem of irrigation and waterways of the said district? If not, why not?

MEMBER in charge of IRRIGATION DEPARTMENT (the Hon'ble Khwaja Sir Nazimuddin): (*a*) (*i*), (*ii*) and (*iii*) Yes.

(*iv*) Government have no information. Local officers have been asked to report.

(*b*) The member is referred to the reply given to the question of Maulvi Abdul Hakim on the same subject on 26th August, 1935.

(*c*), (*d*) (*i*) and (*d*) (*ii*) (*1*) Alhadj Nawab Bahadur Sir Abdelkerim Ghusnavi, of Dilduar (the then Hon'ble Member, Irrigation), promised an investigation into the condition of the Nursunda river and accordingly a temporary section was opened in October, 1934, at Mymensingh in charge of an overseer. The section is still in existence.

(*d*) (*ii*) (*2*) and (*3*) The overseer has investigated and is investigating questions relating to various channels of the district. No report on the work done by the overseer has been submitted to Government yet.

(*e*) Does not arise.

(*f*) Yes.

(*g*) and (*h*) Do not arise.

Deposits by candidates for election to the Murshidabad Municipality.

*58. **Raja Bahadur BHUPENDRA NARAYAN SINHA, of Nashipur:** (a) With reference to the reply to clause (b) (i) of the starred question No. 53, asked by Mr. Narendra Kumar Basu on the 19th August, 1935, and the reply to the supplementary question put by Maulvi Syed Majid Baksh, will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state—

(i) whether the Government have asked the Murshidabad Municipality to refund the amount;

(ii) if so, on what date;

(iii) whether the whole amount has been refunded since then;

(iv) if not, the reasons for withholding the amount?

(b) Do the Government contemplate any measure to check this practice in future?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (a) (i) No. Government asked for an explanation.

(ii) Does not arise.

(iii) No. Four deposits of Rs. 100 each have been refunded out of fifteen deposits.

(iv) Refund of the whole amount could not be made owing to want of funds. The Commissioners expect to refund the balance shortly.

(b) The question will be examined.

Maulvi SYED MAJID BAKSH: Will the Hon'ble Minister be pleased to state what time had elapsed between the time when the refund became due and the time when the refund was actually made?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I ask for notice of that question.

Maulvi SYED MAJID BAKSH: Why funds were not kept available to meet demands for refund which might become due?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The fact is that it was not foreseen.

Mr. NARENDRA KUMAR BASU: Is it the practice of this municipality or is it the general practice that when the deposit money is taken, it goes into the general funds, and that it is subject to the account rules for municipalities?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir.

Mr. NARENDRA KUMAR BASU: Are these account rules sanctioned by Government?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I believe so.

Maulvi SYED MAJID BAKSH: Are we to understand that municipalities can spend an amount kept as deposit and as one held in trust?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, that is so, Sir.

Abolition of Local Boards.

***59. Maulvi TAMIZUDDIN KHAN:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether the Government have come to a decision on the question of abolition of Local Boards?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state whether the Government expect to be able to introduce legislation regarding the abolition of Local Boards during the life time of the present Council?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) No.

(*b*) Does not arise.

Voters' lists for election to local bodies.

***60. Maulvi ABUL QUASEM:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state what steps were taken to print correctly the names of voters and those of their fathers and the qualifications of voters, in connection with the election to the Satkhira Local Board that is being held this year?

(*b*) Were the proofs compared with the original manuscript lists and errors removed?

(*c*) Were persons familiar with and having knowledge of Muslim names entrusted with the duty of preparing the lists and reading and correcting the proofs?

(*d*) Is the Hon'ble Minister aware that the printed voters' lists, as published under rule 23, abound with errors of spelling and collocation of names, particularly Muslim names?

(*e*) Is the Hon'ble Minister aware that voters not answering to the names as printed and published run the risk of having their votes rejected?

(*f*) What steps, if any, do the Government propose taking to have the voters' lists prepared and published correctly?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) All the steps required by the rules were taken.

(*b*) and (*c*) Yes.

(*d*) The number of errors is not many.

(*e*) Yes.

(*f*) None. The rules for the preparation and publication of the voters' lists are sufficient.

Maulvi ABUL QUASEM: With reference to answer (*d*), is the Hon'ble Minister in a position to contradict me when I say that the answer given here is wide of the truth, and that the voters' lists simply bristle with errors?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: That is not the information of Government.

Maulvi ABUL QUASEM: Is the Hon'ble Minister prepared to carefully enquire into the report given to him so as to see whether it is correct or not?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: We asked for information, and information has been supplied to us. Government have no reason to believe that correct information was not supplied.

Maulvi ABUL QUASEM: Will the Hon'ble Minister be pleased to take it from me here and now that the information supplied is incorrect?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: No, Sir.

Mr. NARENDRA KUMAR BASU: If an hon'ble member of this House gives some definite information on his own personal responsibility, is it not desirable that the Hon'ble Minister should accept that?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Generally the practice is to depend on the information supplied by local officers, but if the hon'ble member gives it on his own personal responsibility, certainly I will be willing to satisfy him by enquiring into the matter.

Alleged gambling in Kamarkhara Mela.

***61. *Maulvi ABDUS SAMAD:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state whether it is a fact—

(*i*) that in the house of the late Rai Abhaya Charan Mitra Bahadur at the village Kamarkhara under the jurisdiction of the Tangibari thana in the district of Dacca a seven days' fair (*mêla*) is held annually on the occasion of the *Kali Puja*;

(*ii*) that in connection with the *mêla* unrestricted gambling on commercial scale is carried on there every night along with *jatra* and other musical performances?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Member be pleased to state what steps were taken in the matter?

(*c*) Is the Hon'ble Member aware that crimes in the nature of theft and burglary abnormally increase in the locality during the *mêla* days?

(*d*) Is the Hon'ble Member aware—

(*i*) that this year also the *mêla* was the occasion for unrestricted gambling from the 27th October till the 2nd November;

(*ii*) that the organisers of the *mêla* let out the gambling booths this year at a rent of Rs. 800 and with this money musical performances were held; and

(*iii*) that on the 27th October last Rai Sahib B. C. Ray, the Subdivisional Officer, Munshiganj, and Mr. B. K. Adhikary, Deputy Magistrate, visited the *mêla* with their families and were for that day the guests of the organisers of the *mêla*?

(*e*) If the answer to (*d*) (*i*) be in the affirmative, do the Government contemplate extending the operation of the Gambling Act to village Kamarkhara as a preventive measure?

MEMBER in charge of POLICE DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*) Yes.

(*ii*) Government have no information to this effect.

(*b*) Does not arise.

(*c*) Government are informed that there has been no such increase in crime.

(*d*) (*i*) and (*ii*) Government have no information on the subject, but it is understood that the matter is being inquired into by the Subdivisional Officer.

(*iii*) They visited the *mêla* on the invitation of the proprietors and spent a few hours there on the 27th October last.

(*e*) Does not at present arise.

Dismissal of certain officers of Calcutta Police.

***92. Mr. P. BANERJI:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to state the number of dismissals in the Calcutta Police from January, 1935, to date?

(*b*) Is it a fact that the Acting Commissioner found occasion to dismiss some police officers?

(*c*) If the answer to (*b*) is in the affirmative, will the Hon'ble Member be pleased to state the respective reasons, with the names of the persons dismissed?

(*d*) In regard to dismissals of all officers who had been attached to the Taltollah police-station, will the Hon'ble Member be pleased to state for how long the names of the officers appeared in the account books of the toddy shop-keeper?

(*e*) Will the Hon'ble Member be pleased to lay on the table a statement in detail showing—

(*i*) the list of names found in the account books;

(*ii*) the amount paid to each and the period of payment;

(*iii*) the period covered by payments to the police, and

(*iv*) what further action against those not already dealt with is proposed?

The Hon'ble Mr. R. N. REID: (*a*) Sixty.

(*b*) Some of these officers were dismissed during the tenure of office of the Acting Commissioner.

(*c*) Government do not consider it desirable in the public interest to disclose the names of the officers and men dismissed, but a statement is laid on the Library table showing the number of each rank so dismissed.

(*d*) and (*e*) (*i*), (*ii*) and (*iii*) As the appeals of some of the officers concerned are pending with the Commissioner of Police, it is not desirable to disclose the information.

(*iv*) Action has been taken against all concerned.

Mr. P. BANERJI: Will the Hon'ble Member tell us how many of such officers were dismissed during the tenure of office of the Acting Commissioner?

The Hon'ble Mr. R. N. REID: The hon'ble member will find the answer to his supplementary question in answers (*a*) and (*c*) of the printed questions and answers.

Mr. SHANTI SHEKHARESWAR RAY: With reference to answer (*b*), were these orders of dismissal passed by the Acting Commissioner himself.

The Hon'ble Mr. R. N. REID: In the majority of cases, they were not passed by the Acting Commissioner himself, but by others subordinate to him.

Mr. P. BANERJI: With reference to the statement laid on the Library table, will the Hon'ble Member be pleased to state whether the two Inspectors and the sergeants who were dismissed on account of their indebtedness were Europeans or Indians?

The Hon'ble Mr. R. N. REID: All sergeants are Europeans or Anglo-Indians, and the Inspectors might possibly be Anglo-Indian or European, but probably not.

Mr. SHANTI SHEKHARESWAR RAY: Is there any appeal pending before the present Commissioner of Police against the orders of dismissal passed by the Acting Commissioner?

The Hon'ble Mr. R. N. REID: Yes, but all these orders of dismissal were not passed by the Acting Commissioner?

Mr. P. BANERJI: Will the Hon'ble Member kindly let us know who passed those orders of dismissal?

The Hon'ble Mr. R. N. REID: As I have said just now, the appropriate officers, and not the Acting Commissioner, somebody subordinate to him but who I cannot say definitely.

Mr. P. BANERJI: Was there a single case in which the Acting Commissioner passed an order of dismissal?

The Hon'ble Mr. R. N. REID: No, Sir.

Mr. P. BANERJI: In respect of the 28 constables who were charged with theft, what was the duration of service of these constables?

The Hon'ble Mr. R. N. REID: I want notice of that question, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Does the Hon'ble Member recollect that he stated just now that some of the orders were passed by the Acting Commissioner and that others were passed by proper authorities?

The Hon'ble Mr. R. N. REID: If I said that, I said it under a misapprehension. The correct answer is that no order was passed by the Acting Commissioner.

Mr. P. BANERJI: Was permission taken from Government in any of the cases before dismissal?

The Hon'ble Mr. R. N. REID: I do not think it is desirable to answer that question.

Mr. P. BANERJI: Is the Commissioner of Police the final authority in the matter of reinstatement of any of these dismissed officers?

The Hon'ble Mr. R. N. REID: It depends on the class of officer whose appeal is concerned.

Recruitment of Bengalis to the constabulary.

*63. **Babu KISHORI MOHAN CHAUDHURI:** (*a*) Will the Hon'ble Member in charge of the Police Department be pleased to lay on the table a statement showing—

(*i*) the number of police constables employed at present in Bengal;

(*ii*) how many of them are Bengalis; and

(*iii*) how many belong to other provinces?

(*b*) Is it a fact—

(*i*) that the majority of the police constables are recruited from provinces outside Bengal; and

(*ii*) that only a small number of Bengalis are recruited in this service?

(*c*) If the answer to (*b*) (*ii*) is in the affirmative, what are the reasons?

(*d*) Do the Government advertise when a vacancy occurs in the police force of constables?

(*e*) If the answer to (*d*) is in the affirmative, do the Bengalis apply for these posts?

(*f*) If the vacancies are not advertised, will the Hon'ble Member be pleased to state the reason for not advertising them?

(*g*) Is there any reason for which Bengalis are not recruited in this service?

The Hon'ble Mr. R. N. REID: (*a*) (*i*) 26,058.

(*ii*) 6,936.

(*iii*) 19,122.

(*b*) (*i*) Yes.

(*ii*) The figures given in (*a*) indicate that Bengalis form nearly 27 per cent. of the force.

(*c*) As there is no bar to the enlistment of Bengalis as constables, it is reasonable to infer that employment in this grade of the police service appeals only to a small percentage among them.

(*d*) No.

(*e*) Does not arise.

(*f*) Suitable candidates are available without advertisement.

(*g*) Bengalis are recruited, and under the rules they are given preference, provided they possess the necessary qualifications.

Babu KISHORI MOHAN CHAUDHURI: With reference to answers (*b*) (*ii*), (*c*) and (*d*), how can the Hon'ble Member infer without advertising for them that Bengalis are not willing to come and accept these posts?

The Hon'ble Mr. R. N. REID: I infer that from the fact that they do not join this service, and I think advertisement makes no difference in the matter.

Rai Bahadur Dr. HARIDHAN DUTT: With reference to answer (*g*), may I know whether it is not difficult for Bengalis to comply with the requirements of physique by such candidates, and whether it is not rather too high for them?

The Hon'ble Mr. R. N. REID: I do not think so, but I think I am right in saying that Bengalis are accepted on slightly lower physical qualifications than others.

Rai Bahadur Dr. HARIDHAN DUTT: Is the Hon'ble Member aware that during the last six months three young men of tolerably good physique were sent by me as intending candidates, and that none of them were able to comply with the requirements as regards physical qualifications?

The Hon'ble Mr. R. N. REID: I am not aware of that, Sir.

Mr. NARENDRA KUMAR BASU: Is it in the public interest to have constables of tolerably good physique?

(No answer.)

Rai Bahadur KESHAB CHANDRA BANERJI: Will the Hon'ble Member be pleased to state whether there are instances to show that in spite of the fact that Bengalis possess the necessary qualifications, they were not appointed, and that preference was given to outsiders?

The Hon'ble Mr. R. N. REID: I have no knowledge of that, Sir.

Mr. P. BANERJI: Is the Hon'ble Member aware that some of the approved Bengali candidates were turned out and that the letters issued to them for appearing at the medical examination at the Dullanda House were taken away from them by the officer in charge there who was a non-Bengali, when they appeared with such letters of appointment for medical examination?

The Hon'ble Mr. R. N. REID: I have no knowledge of that, Sir.

Brahmaputra river.

***64. Babu SATISH CHANDRA RAY CHOWDHURY:** (*a*) Is the Hon'ble Member in charge of the Irrigation Department aware—

(*i*) that the river Brahmaputra which runs through the district of Mymensingh in spite of being blocked at its junction with the Jumna used to be kept partially alive and running by a stream flowing from the Garo Hills;

(*ii*) that the said stream has silted up from the foot of the Garo Hills down to Dewanganj—a length of about 25 miles.

(*iii*) that the waters of the Garo Hills which used to feed the Brahmaputra flowing along that stream are being diverted for a few years past along a new channel opened up from the foot of the Garo Hills and falling into the Jumna thus stopping the supply of the Brahmaputra causing its further deterioration; and

(*iv*) that Rai Bahadur S. N. Banerji, the Chief Engineer, Government of Bengal, during his last inspection of Mymensingh, suggested the opening up of the mouth of the blocked stream at the foot of the Garo Hills and the construction of some spurs to divert the current, which now flows into the Jumna, into the Brahmaputra?

(*b*) If the answer to (*a*) (*iv*) is in the affirmative, will the Hon'ble Member be pleased to state—

(*i*) what steps, if any, have the Government taken to give effect to suggestion of the Rai Bahadur; and

(*ii*) whether Rai Bahadur S. N. Banerji submitted any report to the Government in connection with the matter referred to in (*a*)?

(*c*) If the Rai Bahadur has submitted his report, will the Hon'ble Member be pleased to lay a copy of the same on the table?

The Hon'ble Khwaja Sir NAZIMUDDIN: (*a*) (*i*) and (*ii*) Yes.

(*iii*) A large portion of the discharge that formerly used to pass down the Brahmaputra channel now flows into the Jumna river.

(*iv*) Some such suggestion was made tentatively.

(*b*) (*i*) The tentative suggestion was not considered practicable.

(*ii*) Yes.

(*c*) Proposals for improving the discharge of the Brahmaputra river proper have not been finally considered by Government nor has any decision thereon been reached. In these circumstances the tabling of any particular officer's report would serve no helpful purpose.

Training of Scheduled Caste teachers.

*65. **Maulvi NUR RAHMAN KHAN EUSUFJI:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to state whether there is any special provision made for the training of teachers from the Scheduled Castes in the Normal and in Guru Training Schools?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state whether the attention of the Director of Public Instruction, Bengal, has been drawn to it?

Mr. H. GRAMAM: (*a*) No.

(*b*) Does not arise.

Dr. Charu Chandra Bannerji.

*66. **Dr. AMULYA RATAN GHOSE:** (*a*) Will the Hon'ble Member in charge of the Political Department be pleased to state—

(*i*) whether Dr. Charu Chandra Bannerji is in detention without trial;

(*ii*) if so, how long is he in detention;

(*iii*) where has he been interned or detained;

(*iv*) whether any allowance for his maintenance is granted;

(*v*) if so, how much;

(*vi*) under what law has he been interned or detained;

(*vii*) how long is he required to be kept in that condition;

(*viii*) whether it is a fact that he is keeping indifferent health;

(*ix*) what steps are being taken so that he is properly looked after; and

(*x*) whether his relatives are allowed to interview him?

(*b*) If the answer to (*a*) (*x*) is in the affirmative, will the Hon'ble Member be pleased to state how many times since the period of his detention his relatives have interviews with him?

The Hon'ble Mr. R. N. REID: (*a*), (*i*), (*ii*) and (*vi*) Since September, 1934, Dr. Bannerji has been required to reside in areas specified by Government in orders issued by them under section 2 (*1*) of the Bengal Criminal Law Amendment Act, 1930.

(*iii*), (*iv*) and (*v*) Government are not prepared to give this information.

(*vii*) The existing restrictions must be maintained until Government consider that they can safely be relaxed.

(*viii*) and (*ix*) Government have no reason to believe that he is in bad health. If he requires medical advice he may, under certain conditions, visit a medical officer.

(*x*) Yes, subject to permission by the proper authorities.

(*b*) Since March, 1935, Dr. Bannerji has been visited by his children on three occasions. His wife is with him.

Record room for Howrah.

*67. **Dr. AMULYA RATAN GHOSE:** (*a*) Is the Hon'ble Member in charge of the Judicial Department aware—

(*i*) that the record room of the Howrah district is still situated within the Hooghly district;

(*ii*) that the litigants and the public of the Howrah district are inconvenienced and put to loss; and

(*iii*) that there is a gradual increase in the number of sessions cases and civil suits and also in the number of lawyers and officers in the Howrah district court?

(*b*) If the answer to (*a*) is in the affirmative, is the Hon'ble Member contemplating complete separation of the two districts within a year?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*) Yes.

(*ii*) Government are aware that it would be more convenient for litigants if there was a record room at Howrah.

(*iii*) No, the number of sessions cases and of civil suits has remained substantially constant. There were 328 pleaders in 1930 and 380 in 1934.

(*b*) No. A scheme for complete separation by stages is, however, under examination, but it may be difficult to find the necessary funds.

Third Munsif, Howrah.

***68. Dr. AMULYA RATAN GHOSE:** (*a*) Is the Hon'ble Member in charge of the Judicial Department aware of the fact that the Third Munsif, Howrah, holds his court till 7 p.m.?

(*b*) If the answer to (*a*) is in the affirmative, is the Hon'ble Member considering the desirability of taking steps to stop holding courts till 7 p.m.?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) No, but he sits on rare occasions after 5 p.m. to finish the examination of a witness or a short case already taken up and this only at the request of the parties.

(*b*) Does not arise.

Collection from boat hire by Kurigram civil courts.

***69. Kazi EMDADUL HOQUE:** (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to lay on the table a statement showing for the last three years—

(*i*) how much collection has been made from boat hire by the civil courts of Kurigram showing the same, year by year, against each court;

(*ii*) how much of the amount collected has been actually paid to the process-servers; and

(*iii*) how much has been left undisbursed?

(*b*) Are the Government considering the desirability of spending the balance, if any, for industrial schemes in the district of Rangpur and especially for the industrial development of the Kurigram subdivision?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*), (*ii*) and (*iii*) A statement is laid on the table.

(*b*) No.

Statement referred to in the reply to clause (a) of starred question No. 69.

Year.	Amount realised.		Amount spent.		Balance.	
	Rs.	A.	Rs.	A.	Rs.	A.
1932-33	... 1,300	0	...		1,300	0
1933-34	... 1,169	3	...		1,169	3
1934-35	... 415	0	265	1	149	15

A new disease in the 24-Parganas.

*70. **Maulvi TAMIZUDDIN KHAN:** (a) Is the Hon'ble Minister in charge of the Local Self-Government (Medical and Public Health) Department aware—

(i) that a new disease has made its appearance in some parts of the 24-Parganas district which takes its victims quite unawares, its attack being attended with a peculiar sensation in the legs, giddiness of the head, and ultimately unconsciousness and death;

(ii) that a large number of persons have recently died of this disease; and

(iii) that there is a feeling of panic amongst the general public in the affected areas owing to the appearance of this new pest?

(b) If the answer to (a) is in the affirmative, will the Hon'ble Minister be pleased to state—

(i) further particulars about the disease;

(ii) the extent of its spread; and

(iii) the remedies, if any, that are available to the victims?

(c) What steps, if any, do the Government intend to take to combat this malady and to allay public anxiety?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (a) (i) What appears to be a new disease has occurred in parts of Khulna, the 24-Parganas and Jessore. The disease is seldom fatal. A provisional diagnosis was made by the Assistant Director of Public Health, Presidency Circle, a copy of whose report, dated the 5th December, 1935, dealing fully with the clinical aspects of the disease, is laid on the Library table.

(ii) No.

(iii) Yes.

(*b*) (*i*), (*ii*) and (*iii*) The member is referred to the note of the Assistant Director of Public Health, Presidency Circle, which has been laid on the Library table.

(*c*) A proposal to appoint a small special staff to undertake measures in co-operation with the District Health Officers of the districts concerned, for giving such medical relief as is possible, and for allaying public anxiety is now under consideration. A wireless lecture on the subject was broadcasted on the 27th November, 1935, and a press-note giving information regarding the disease was issued on Sunday, the 8th December. The Public Health Department has also arranged to distribute printed leaflets on the subject in Bengali in the affected areas through the District Boards.

Sugarcane.

*71. **Maulvi TAMIZUDDIN KHAN:** (*a*) Is the Hon'ble Minister in charge of the Agriculture and Industries Department aware that the Governments of the United Provinces and Bihar and Orissa have fixed a minimum price for sugarcane in those provinces?

(*b*) Have similar steps been taken in Bengal? If not, why not?

(*c*) Do the Government intend doing anything in this direction in the near future?

MINISTER in charge of AGRICULTURE and INDUSTRIES DEPARTMENT (the Hon'ble Nawab K. G. M. Faroqui, of Ratanpur): (*a*) Yes.

(*b*) and (*c*) Government have under consideration the appointment of a committee composed of officials and representatives of factories and growers to enquire into and report as to the desirability of applying the provisions of the Sugarcane Act, 1934, in Bengal, and to make specific recommendations for the purpose of assisting the cultivator to secure fair prices for his cane.

Maulvi TAMIZUDDIN KHAN: Will the Hon'ble Minister be pleased to state for how long the appointment of a committee has been under the consideration of Government?

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: Only recently, Sir.

Maulvi TAMIZUDDIN KHAN: Will the Hon'ble Minister be pleased to state as to when possibly Government may come to a decision on the question of appointment of this committee?

The Hon'ble Nawab K. G. M. FAROQUI, of Ratanpur: As early as possible, Sir.

Maulvi TAMIZUDDIN KHAN: Is it likely that the committee may be appointed within the present financial year?

The Hon'ble Nawab K. G. M. FARDQUI, of Ratanpur: Most likely, Sir.

Chittagong Etimkhana.

*72. **Haji BADI AHMED CHOWDHURY:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing—

(*i*) how many orphanages and *etimkhanas* there are at present in the presidency of Bengal with their locations;

(*ii*) the number of orphans in each;

(*iii*) the amount of Government grant paid to each during the last three years;

(*iv*) from what head of the Bengal Budget Estimates these grants are made;

(*v*) who is the controlling officer of these grants?

(*b*) Is the Hon'ble Minister aware—

(*i*) that the Chittagong *Etimkhana* has under its charge a large number of orphans, and has also attached to it a junior madrasah, a weaving class and an agricultural class; and

(*ii*) that there is no aid from the Government to partially meet the fooding expenses of the orphans and none to advance their training in weaving and agriculture?

(*c*) Will the Hon'ble Minister be pleased to state whether the Government are considering the desirability of granting to the Chittagong *Etimkhana* an aid to meet its requirements under the various heads?

Mr. H. GRAHAM: (*a*) The information is not readily available.

(*b*) (*i*) The Chittagong *Etimkhana* has 70 inmates, 28 reading in the Junior Madrasah and 42 in the Primary School. The information whether it has weaving and agricultural classes attached to it is not immediately available.

(*b*) (*ii*) and (*c*) The Junior Madrasah is in receipt of a recurring grant of Rs. 30 per month from the Education Department and the question of paying a capitation grant for the inmates of the *etimkhana* is under their consideration. The Ministry of Education are not concerned with the grants for weaving and agricultural classes.

Bansabati railway station.

*73. **MUNINDRA DEB RAI MAHASAI:** (*a*) Is the Hon'ble Member in charge of the Public Works (Railways) Department aware—

(*i*) that there are no waiting rooms at the Bansabati railway station on the East Indian Railway; and

(*ii*) of the inconvenience caused thereby to passengers, specially to females?

(*b*) Are the Government considering the desirability of having early steps taken to provide for such waiting rooms at the said station?

Mr. D. CLADDING: (*a*) (*i*) Yes.

(*ii*) It is realised that a waiting room is conducive to the convenience of passengers.

(*b*) The provision of a waiting room depends upon funds being available and the needs of more important stations with a greater volume of passenger traffic.

Distribution of grants-in-aid to schools in the Chittagong Division.

*74. **Maulvi SYED OSMAN HAIDER CHAUDHURI:** (*a*) Is the Hon'ble Minister in charge of the Education Department aware—

(*i*) that in the Chittagong Division the application for the grant-in-aid is submitted in the Divisional Inspector's office in April, but

(*ii*) the sanction of the grant is accorded generally in August, every year?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of giving the sanctions in such a way that the institutions concerned may not suffer for such an inordinate delay in future?

MINISTER in charge of EDUCATION DEPARTMENT (the Hon'ble Khan Bahadur M. Azizul Haque): (*a*) (*i*) No; about one-third of the total number of applications are received in April, and the rest during May to September.

(*ii*) No.

(*b*) There was very little delay between the receipt of orders in the Inspector's office and communication of sanction to individual schools. The Inspector of Schools, Chittagong Division, has, however, been asked to distribute grants as quickly as possible.

Bengal Engineering College, Sibpur.

*75. **Rai Bahadur SATYENDRA KUMAR DAS:** (*a*) Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing—

(*i*) what courses of study are available for the students of the Bengal Engineering College, Sibpur;

(*ii*) the number of students in the different classes and departments;

(*iii*) the number of students that passed the Final Examinations during the last three years;

(*iv*) the names, academic qualifications and pay of each member of the teaching staff;

(*v*) sources of income of the College;

(*vi*) annual recurring expenditure under the following heads:—

(1) salaries of the administration and teaching staff,

(2) provident funds and pensions of the administration and teaching staff,

(3) library,

(4) salaries of clerical and workshop staff and wages of menials,

(5) laboratories and workshop (materials, instruments, gas, light, electricity, etc.), and

(6) miscellaneous;

(*vii*) Assets as per last valuation under the heads—

(1) building and other permanent fixtures,

(2) instruments, machineries and equipments in laboratories and workshops,

(3) library, and

(4) others?

(*b*) Are the Government considering the desirability of obtaining information under the above heads (*a*)(*i*) to (*vii*) in respect of the Victoria Jubilee Institute of Bombay, the Engineering Colleges of Poona and of Roorkee and of Benares Hindu University, as well as of the Maclagan Engineering College of the Punjab?

Mr. H. GRAHAM: (*a*) (*i*) to (*vi*) Statements are laid on the Library table.

(*vii*) The information is not readily available.

(*b*) No.

Old Benares Road.

*76. **MUNINDRA DEB RAI MAHASAI:** (*a*) Has the attention of the Hon'ble Minister in charge of the Local Self-Government Department been drawn to—

(*i*) a note, dated the 7th July, 1931, of Mr. K. C. Nandy, District Engineer, Hooghly, in which it was recorded that Government advised the then Commissioner, Burdwan Division, to induce the Government to take up the improvement of the old Benares Road in case the public opinion was in favour of the same;

(*ii*) the opinion expressed on this subject in the repeated representations to the Government including the following:—

(1) the Chief Engineer, Public Works Department, Bengal's letter No. 1210-C., dated the 4th November, 1929, to the Superintending Engineer, Central Circle,

(2) the speech of the District Magistrate, Hooghly, in the minutes of the conference organised by the Hooghly District Board on the 9th and 16th May, 1930,

(3) the extract from the letter No. 134, dated the 8th April, 1935, in reply to a public representation laid on the table at the meeting of the Provincial Board of Communications on the 16th August, 1935,

(4) the letter No. 1607 of the 30th May, 1935, from the Bengal Chamber of Commerce, to the Government,

(5) the letter No. G. 1/6 of the 25th June, 1935, from the Bengal National Chamber of Commerce, to the Government,

(6) the letter, dated the 29th April, 1935, from Automobile Association of Bengal, to the Secretary, Provincial Board of Communications;

(7) the letter dated May, 1935, from the Calcutta Motor Industries Association, to the Secretary, Provincial Board of Communications, and

(8) the speech of the Hon'ble Minister himself when he visited Chanditala on the 24th July, 1932?

(*b*) If the answers to (*a*) are in the affirmative, will the Hon'ble Minister be pleased to state—

(*i*) what action has been taken by the Government to improve the old Benares Road;

(*ii*) when the work is likely to be taken up; and

(*iii*) the reasons for delay in commencing the work?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) No.

(*ii*) (1), (2) and (3) No.

(4), (5), (6), (7) and (8) Yes.

(*b*) (*i*) The matter was considered by the Provincial Board of Communications and it was decided to refer the proposal to the Special Officer, Road Development Projects, the District Boards of Hooghly and Howrah and the Commissioner of the Division for their views.

(*ii*) and (*iii*) The work cannot be taken up until these opinions are received and examined and the scheme is sanctioned by the local Government and the Government of India.

Union boards in Midnapore.

*77. **Mr. SHANTI SHEKHARESWAR RAY:** (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to state whether it is a fact that the Government are contemplating the establishment of union boards in the Midnapore district?

(*b*) If the answer to (*a*) is in the affirmative, will the Hon'ble Minister be pleased to state in what subdivisions and thanas such boards are to be established?

(*c*) Have the Government taken any opinion of the people regarding the establishment of union boards?

(*d*) Is it a fact that the Government are receiving strong opposition from the people of Midnapore against the establishment of the union boards?

(*e*) If the answer to (*d*) is in the affirmative, is it still the intention of Government to establish union boards in the Midnapore district?

(*f*) Is it a fact that Government officers convene meetings where officers speak for the establishment of the union boards and the people in general are not allowed to speak?

(*g*) Is it a fact that dafadars, chaukidars and even high Government officers intimidate people by saying that any one who will speak against union boards will be severely dealt with?

(*h*) Are the Government considering the desirability of making an enquiry about the matter referred to in (*g*)?

(*i*) Is it a fact that one Radhashyam Mahapatra, President of Union No. 9 of Ramnagar police-station in the Contai subdivision

and a nominated member of the Contai Local Board, collected signatures from villages on the plea of submitting an application for erection of a bridge on the Pichboni khal but he used these signatures with an application to the District Magistrate for the establishment of union boards in Ramnagar?

(*j*) If the answer to (*i*) is in the affirmative, what steps do the Government intend taking against him?

(*k*) Is it a fact that Babu Natendra Nath Dass, Pleader of Contai, Kumar Narayan Jana, Congress worker of Tamluk, have been home interned and Babu Sudhir Chandra Dass, the Congress worker of Contai, have been kept under police custody in the Midnapore town because they expressed their opinion before high Government officers against the establishment of union boards and became Government officers' suspects about organising public opinion against union boards?

(*l*) Is it the policy of the Government to use coercion and intimidation instead of arguments and persuasion for the establishment of the union boards?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) Yes.

(*b*) Only five union boards are being established in thanas Egra, Khedgree and Contai in the Contai subdivision and thanas Dantan and Panskura in the Sadar and Tamluk subdivisions, respectively.

(*c*) Yes.

(*d*) No.

(*e*) Does not arise.

(*f*) Circle officers during their tours meet Watch and Ward Committees and point out the advantages of Village Self-Government. Discussion is free at such meetings.

(*g*) and (*h*) No.

(*i*) There was a complaint to this effect, but it was not substantiated.

(*j*) Does not arise.

(*k*) Action was taken against Natendra Nath Dass and Sudhir Chandra Dass for entirely different reasons. Government have not yet received any information regarding Kumar Narayan Jana.

(*l*) No.

Mr. P. BANERJI: Will the Hon'ble Minister kindly let us know as to whether Kolaghat has been considered as one of the places where the union board is also to be introduced?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have no information, Sir.

Mr. P. BANERJI: Is it not a fact that besides the Circle Officers, the District Magistrate also has been holding meetings at different places?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Probably so, Sir.

Mr. P. BANERJI: Will the Hon'ble Minister kindly let us know why information about Kumar Narayan Jana has not been so far received?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: The report has got to come through the Divisional Commissioner; hence the delay.

Mr. P. BANERJI: Is the Hon'ble Minister aware that Kumar Narayan Jana was not doing anything against law, but that he was only collecting subscriptions and contributions to the Deshapran Birendra Nath Sasmal Memorial Committee of which he is the Assistant Secretary?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: We have no information.

Mr. P. BANERJI: Is it not a fact that he was called from Calcutta by a letter written by a friend of his at the instance of the Subdivisional Officer?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Government have no information, Sir.

Mr. P. BANERJI: Is it not also a fact that when subsequently he appeared at the bungalow of the Subdivisional Officer, a Criminal Investigation Department officer who was waiting for him outside the bungalow arrested him immediately?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: We have no information, Sir.

Mr. P. BANERJI: Is the Hon'ble Minister prepared to enquire into these matters?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: We have asked for information already.

Mr. P. BANERJI: I want to know how that information will be available to me?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: It will be given at the next session of the Council.

Mr. P. BANERJI: Is it not a fact that a large number of petitions signed by a large number of men from different parts of Midnapore has been received by the Hon'ble Minister?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: Yes, Sir.

Mr. SHANTI SHEKHARESWAR RAY: Will it be necessary for us to give a fresh notice for the question or whether the information will be given without any further notice?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: We can send it to the member personally without any notice.

Mr. P. BANERJI: How many persons have signed the petitions that have been received by the Hon'ble Minister?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: I have not counted them, and I cannot give the figure.

Court-fees payable on petitions for payment of arrears of rent.

*78. **Haji BADI AHMED CHOWDHURY:** (*a*) Is the Hon'ble Member in charge of the Revenue Department aware that the court-fee payable on petitions for gun licenses, deposit and certificate cases and rent suits below Rs. 50 is lower than that payable on petitions for payment of arrears of rent of Noabad taluks (temporarily-settled estates) and revenue of *tarafs*, *lakhraj bajeaptis* (permanently-settled estates) below Rs. 50?

(*b*) If the answer to (*a*) is in the affirmative, what is the reason for the difference?

(c) Is the Hon'ble Member aware that the increase of court-fee payable on petitions for payment of arrears of rent and revenue referred to in (*a*) is causing great hardship on the people of Chittagong and other districts?

(*d*) Are the Government contemplating reduction of court-fees so as to make the two classes uniform?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) and (*b*) The member is referred to clauses (*a*) and (*b*) of Article I of Schedule II to the Court-Fees Act.

(*c*) and (*d*) No.

Sale of estates in Faridpur.

*79. **Rai Bahadur AKSHOY KUMAR SEN:** Will the Hon'ble Member in charge of the Revenue Department be pleased to state—

(*i*) how many estates in the district of Faridpur were advertised for sale for non-payment of revenue during the year 1934; and

(*ii*) how many were actually sold?

The Hon'ble Sir BROJENDRA LAL MITTER: (*i*) and (*ii*) During the year 1934-35, 322 whole estates and shares of 231 estates were advertised for sale, of which 66 and 33, respectively, were actually sold. Figures for the calendar year are not readily available.

Landlords' fees from Kurigram subdivision.

*80. **Kazi EMDADUL HOQUE:** (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to lay on the table a statement showing for the Kurigram subdivision—

(*i*) how much collection has been made under the head "landlords' fees" during the last three years;

(*ii*) how much during the three years previous thereto;

(*iii*) how much landlords' fees have been forfeited to the Government until now; and

(*iv*) how the amount forfeited has been spent by Government?

(*b*) If the forfeited amount has not been spent as yet, how is it proposed to be spent?

(*c*) Are the Government considering the desirability of spending the forfeited landlords' fees for industrial purposes in Rangpur, preferably for the Kurigram subdivision?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*), (*ii*) and (*iii*) All accounts in connection with landlords' fees are kept district by district, and separate figures for subdivisions are not available.

(*a*) (*iv*) and (*b*) The member is referred to section 18C of the Bengal Tenancy Act, 1885.

(*c*) No.

Golakpur and Haybatnagar Court of Wards Estates.

*31. **Maulvi ABDUL HAKIM:** (a) Will the Hon'ble Member in charge of the Revenue Department be pleased to state whether it is a fact that the permanently-settled estates of Golakpur and Haybatnagar in the district of Mymensingh are being managed by the Court of Wards?

(b) If the answer to (a) is in the affirmative, will the Hon'ble Member be pleased to state separately in terms of percentage on rents the approximate amount of the collection charge for collecting rents from raiyats and tenure-holders, if any, under each of these estates?

(c) Will the Hon'ble Member be pleased to lay on the table a statement showing for the years 1932 and 1933—

(i) the amounts of rents realised from the raiyats and tenure-holders, if any, under each of the said estates; and

(ii) the net income left to the Court of Wards excluding the cost of collection?

(d) Does this cost for collection include the pay and allowance of the manager and his staff?

(e) Are the rents of these estates realised by certificate procedure?

(f) If the answer to (e) is in the affirmative, will the Hon'ble Member be pleased to lay on the table a statement showing for the years 1932 and 1933—

(i) the number of certificate cases in each of the said estates; and

(ii) the result of these certificate cases?

(g) Is it a fact that several holdings sold in public auction for arrears of rents were settled with a third party?

(h) If the answer to (g) is in the affirmative, will the Hon'ble Member be pleased to state what is the proportion of the number of such holdings as compared with the total number of holdings in each of the said estates in 1932 and 1933?

The Hon'ble Sir BROJENDRA LAL MITTER: (a) Yes.

(b) In 1934-35, the cost of collection was 12·7 per cent. of the current demand in the Golakpur Estate and 13·2 per cent. in the Haybatnagar Estate.

(c) and (f) A statement is laid on the table.

(d), (e) and (g) Yes.

(h) This information is not readily available.

I. Statement referred to in the reply to clauses (c) and (f) of starred question No. 81, showing the amount of rents realised and the net income of the Golakpur and Haybatnagar estates in 1932 and 1933.

Name of estate.	Rents realised in—		Net income in—	
	1932.	1933.	1932.	1933.
	Rs.	Rs.	Rs.	Rs.
Golakpur	1,35,956	1,19,475	96,067	96,760
Haybatnagar	1,07,424	1,00,697	65,713	65,028

II. Statement showing the working of the certificate procedure in Golakpur and Haybatnagar estates during 1932 and 1933.

Name of estate.	Number of certificates filed in—		Number of cases disposed of—		Number of cases pending.
	1932	1933.	By full realisation of demand without sale of holdings.	By sale of holdings.	
Golakpur .	1,010	644	950	687	17
Haybatnagar ..	724	423	972	175	Nil

Appointment of Scheduled Castes to Government services.

***82. Maulvi NUR RAHMAN KHAN EUSUFJI:** (*a*) Will the Hon'ble Member in charge of the Appointment Department be pleased to state how many appointments have been made in the district of Mymensingh from the candidates belonging to the Scheduled Castes (depressed classes) in the following services from the time the circular about their appointments was issued up to November, 1935:—

(*i*) Sub-Inspector of Police; and

(*ii*) clerks to courts of the District and Subordinate Judges and Munsifs?

(*b*) Will the Hon'ble Member be pleased to lay on the table a list showing the names of the persons so appointed?

MEMBER in charge of APPOINTMENT DEPARTMENT (the Hon'ble Mr. R. N. Reid): (*a*) (*i*) The orders of 1931 to which the question is presumed to refer do not apply to Sub-Inspectors of Police.

(*ii*) Two.

(*b*) Satish Chandra Das and Romesh Chandra Das.

Rai Bahadur SARAT CHANDRA BAL: How many non-Muslims were appointed during the period in question?

The Hon'ble Mr. R. N. REID: I must ask for notice of that question.

Connecting Barisal by Railway.

***83. Maulvi TAMIZUDDIN KHAN:** Will the Hon'ble Member in charge of the Public Works (Railways) Department be pleased to state whether there is a project to connect Barisal with Calcutta by railway *viâ* Bhatiapara and Madaripur?

The Hon'ble Sir JOHN WOODHEAD: The answer is in the negative.

Mr. P. N. GUHA: Will Secretary, Public Works (Railways) Department, kindly state if there is any project for connecting Barisal by railway with Calcutta?

Mr. D. CLADDING: No, Sir.

Mr. P. N. GUHA: Will Secretary kindly say what has been the fate of the Char-Muguria project?

Mr. D. CLADDING: I must ask for notice of that, Sir.

Civil Court Ministerial Staff.

***84. Kazi EMDADUL HOQUE:** (*a*) Is the Hon'ble Member in charge of the Judicial Department aware that owing to the recent High Court circulars the volume of the work of the ministerial staffs of Civil Courts has been increased?

(*b*) If the answer to (*a*) is in the affirmative, are the Government considering the desirability of increasing the ministerial staff?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) Yes, there is a feeling that clerical work has increased in certain directions.

(*b*) Government have already decided to depute an officer to investigate this matter and to report to Government. He is expected to take up his work in January next.

Ministerial Staff of Jessore Magistracy.

*85. **Mr. MUKUNDA BEHARY MULLICK:** (*a*) Will the Hon'ble Member in charge of the Revenue Department be pleased to lay on the table a statement showing for the years 1930, 1931, 1932, 1933 and 1934,—

(*i*) the number of appointments made in the ministerial staff of the Collectorate offices including the office of the Court of Wards under the control of the District Magistrate of Jessore;

(*ii*) the number of candidates who were appointed to these posts in each of the aforesaid years;

(*iii*) the educational qualifications of the candidates appointed;

(*iv*) the number and educational qualifications of the candidates, if any of the depressed classes (scheduled castes) for these appointments;

(*v*) whether any of the candidates from the scheduled castes were at all appointed; and

(*vi*) whether any advertisement was issued for these appointments?

(*b*) Will the Hon'ble Member be pleased to state the principle upon which the appointments referred to in (*a*) were made?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) (*i*), (*ii*), (*iii*), (*iv*), (*v*) and (*vi*). A statement is laid on the library table.

(*b*) In accordance with the rules contained in Chapter IV of the Board's Miscellaneous Rules.

Remuneration to Copyists and Typists of the High Court.

*86. **Maulvi SYED MAJID BAKSH:** Will the Hon'ble Member in charge of the Judicial Department be pleased to state—

(*i*) the amount of fee per folio of 90 words chargeable from persons who want to take copies from the Calcutta High Court, and

(*ii*) the amount paid to the typists and copyists for copying such a folio?

The Hon'ble Sir BROJENDRA LAL MITTER: (*i*) A fee of 10 annas per folio of 90 words is chargeable from persons who want to take copies from the Calcutta High Court (Original Side).

(*ii*) The copyists are paid at the rate of 1 anna and 3 pies per folio of 90 words on the Original Side of the Court.

The amount payable to the typists varies as follows:—

one anna and 3 pies per folio for first copy;

one-fifth of the charges payable for the first copy is paid on the second copy;

No charges are payable for the third copy.

Admission of Pleaders' Clerks to Courts' Sherista.

*87. **Kazi EMDADUL-HOQUE:** (*a*) Will the Hon'ble Member in charge of the Judicial Department be pleased to state whether it is a fact that the pleaders' clerks are kept out of the Courts' Sherista and have no access thereto?

(*b*) What were the reasons which led the Hon'ble Member to refute this fact in answer to a similar question in a previous session of the Council?

(*c*) Is the Hon'ble Member aware that owing to a circular of the Hon'ble High Court access by pleaders' clerks to the Courts' Sherista merely means "approach to the Sherista but not to enter it"?

(*d*) Is the Hon'ble Member aware that the said restriction imposed upon the pleaders' clerks has been causing inconvenience to the litigant public?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) Registered clerks are allowed access under rule 975, Chapter 42 of High Court's Civil Rules and Orders, Volume I.

(*b*) The questions asked at a previous session of the Council had reference to "innumerable confidential circulars" and were not similar.

(*c*) Pleaders' clerks are under the rules not allowed to go inside the office of any Court without the special permission of the Presiding Judge.

(*d*) No.

Ministerial Officers of Education Department.

*88. **Babu AMULYADHAN RAY:** Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing separately for the present time—

(*i*) the total number of ministerial officers in Government offices of the Education Department, Bengal (including Inspectorates, Institutions, Secretariat, etc.) on the present pay from—

(*a*) Rs. 80 to Rs. 100,

(b) Rs. 101 to Rs. 150, and

(c) above Rs. 150; and

(ii) how many of them are—

(a) Mussalmans, and

(b) scheduled castes,

respectively under each of the above heads?

Mr. H. Graham: The information is not readily available.

Teachers, etc., of certain institutions.

*89. **Khan Bahadur Maulvi MUAZZAM ALI KHAN:** Will the Hon'ble Minister in charge of the Education Department be pleased to lay on the table a statement showing for the present time the qualification of professors, lecturers, etc., in the following Government institutions:—

(1) Presidency College,
(2) Hooghly College,
(3) Krishnagar College,
(4) Rajshahi College,
(5) Chittagong College,
(6) Dacca Intermediate College,
(7) David Hare Training College, Calcutta,
(8) Teachers' Training College, Dacca,
(9) Bengal Engineering College, Sibpur,
(10) Ahsanullah School of Engineering, Dacca,
(11) Government Commercial Institute, Calcutta, and
(12) Government School of Art, Calcutta.

Mr. H. GRAHAM: The information is not readily available and cannot be obtained in time.

UNSTARRED QUESTIONS

(answers to which were laid on the table)

Loan Companies.

23. **Maharaja SRIS CHANDRA NANDY, of Kasimbazar:** (a) Will the Hon'ble Member in charge of the Commerce Department be pleased to lay on the table a statement showing for the years from 1928-1935—

(i) the yearly number of Loan Companies operating in Bengal;

(*ii*) the yearly number of Loan Companies that have gone into liquidation (voluntary or otherwise);

(*iii*) the yearly number of Loan Companies that have taken advantage of section 153 of the Indian Companies' Act;

(*iv*) the amount of share capital, deposits and investments; and

(*v*) the number of joint-stock commercial banks operating, the number of failures, if any, the amount of share capital, deposits and investments?

(*b*) Will the Hon'ble Member be pleased to state whether Mr. M. L. Darling, C.I.E., I.C.S., appointed to enquire into the working of the Loan Companies, has submitted his report to the Government?

(*c*) If the answer to (*b*) is in the affirmative, are the Government considering the desirability of publishing the said report? If not, why not?

(*d*) What are the recommendations of Mr. Darling as regards the problem of the Loan Companies?

(*e*) What steps, if any, do the Government propose taking in order to put the Loan Companies on a sounder position and to remodel them on approved lines?

MEMBER in charge of COMMERCE DEPARTMENT (the Hon'ble Sir John Woodhead): (*a*) A statement furnishing such of the information as is available is laid on the table.

(*b*) The attention of the hon'ble member is invited to the reply given to (*a*) of the question No. 66, asked by him on 27th August, 1935.

(*c*) The attention of the hon'ble member is invited to the reply given to (*b*) of the question referred to above and to the replies to the supplementary questions asked by Babu Hem Chandra Roy Choudhuri.

(*d*) and (*e*) Government have considered Mr. Darling's report and are satisfied that the situation is such that nothing but a very substantial rise in the prices of agricultural products can save the bulk of these loan offices. When prices rise sufficiently to afford hope that reorganisation of the sounder concerns will be practical the whole position will be reviewed.

Statement referred to in the answer to clause (a) of unstarred question No. 23.

Number of Loan Companies operating in Bengal at the close of the financial years from 1928-29 to 1934-35—

1928-29—479.	1931-32—571.
1929-30—543.	1932-33—574.
1930-31—571.	1933-34—572.

1934-35—572.

Number of Loan Companies that have gone into liquidation each year from 1928-29 to 1934-35—

1928-29—1.	1931-32—7.
1929-30—Nil.	1932-33—2.
1930-31—Nil.	1933-34—5.

1934-35—6.

Total amount of share capital of Loan Companies in Bengal at the close of each year from 1928-29 to 1934-35—

(In lakhs of rupees.)

	Authorised.	Subscribed.	Paid up.
1928-29	... 3,61	65	38
1929-30	... 4,22	76	42
1930-31	... 4,54	85	46
1931-32	... 4,45	90	47
1932-33	... 4,46	96	50
1933-34	... 4,49	1,11	56
1934-35	... 4,49	1,13	56

Number of Joint Stock Banks operating in Bengal at the close of the financial years from 1928-29 to 1934-35—

1928-29—320.	1931-32—443.
1929-30—392.	1932-33—450.
1930-31—437.	1933-34—455.

1934-35—473.

Number of Joint Stock Banks that have gone into liquidation each year from 1928-29 to 1934-35—

1928-29—1.	1931-32—1.
1929-30—1.	1932-33—5.
1930-31—8.	1933-34—11.

1934-35—9.

Total amount of share capital of Joint Stock Banks in Bengal at the close of each year from 1928-29 to 1934-35—

(In lakhs of rupees.)

	Authorised.	Subscribed.	Paid up.
1928-29	... 54,30	6,24	3,28
1929-30	... 80,03	6,35	3,32
1930-31	... 81,83	6,43	3,35
1931-32	... 82,09	6,52	3,41
1932-33	... 82,17	6,60	3,46
1933-34	... 81,62	6,77	3,53
1934-35	... 80,12	6,81	3,55

Babu HEM CHANDRA ROY CHOUDHURI: Will the Commerce Secretary be pleased to state the reasons why the amount of deposits in joint stock commercial banks have not been given?

Mr. D. CLADDING: The information was not available.

Babu HEM CHANDRA ROY CHOUDHURI: Has any enquiry been made about the total amount of such deposits?

Mr. D. CLADDING: I understand that some enquiry was made.

Babu HEM CHANDRA ROY CHOUDHURI: Will the Commerce Secretary kindly let us know the amount of deposits in banks which have gone into liquidation?

Mr. D. CLADDING: I have no information, Sir.

Legislative Department of the Secretariat.

24. Maulvi ABDUL HAMID SHAH: (*a*) Will the Hon'ble Member in charge of the Legislative Department be pleased to state—

(*i*) whether the Bengal Legislative Department is a Civil Secretariat Department; and

(*ii*) whether there are Upper Division assistants in the Legislative Department like that of the other Civil Secretariat Departments?

(*b*) If the answer to (*a*) (*ii*) is in the negative, will the Hon'ble Member be pleased to state the reasons for this differential treatment?

MEMBER in charge of LEGISLATIVE DEPARTMENT (the Hon'ble Sir Brojendra Lal Mitter): (*a*) (*i*) Yes.

(*ii*) There is no Upper Division post properly so called, but there is a Superintendent on a special grade.

(*b*) Because when the present structure of the office was decided upon it was not considered that any post on the Upper Division scale was necessary.

Babu KISHORI MOHAN CHAUDHURI: Will the Hon'ble Member be pleased to state whether it is not a fact that the Upper Division posts demanded by the Legislative Department on several occasions in the past were not sanctioned by the Finance Department?

The Hon'ble Sir BROJENDRA LAL MITTER: Inter-departmental communications are confidential.

Process-servers of Birbhum civil courts.

25. MUNINDRA DEB RAI MAHASAI: Will the Hon'ble Member in charge of the Judicial Department be pleased to state for the district of Birbhum—

(*i*) the arrangements for guarding the civil court buildings;

(*ii*) how many night-watchmen are there; and

(*iii*) how many process-servers are daily required in each of the civil court stations to guard the premises in the morning, evening and at noon?

The Hon'ble Sir BROJENDRA LAL MITTER: (*i*) The court buildings are guarded at night by one night-watchman and in the morning by one process-server, if available, at each civil court station.

(*ii*) Four night-watchmen—one at each station in the district.

(*iii*) In the absence of any day-guards, one process-server, if available, is placed on guard over the court premises at each station in the morning only.

Proposed Improvement Trust for Howrah.

26. Dr. AMULYA RATAN GHOSE: (*a*) Will the Hon'ble Minister in charge of the Local Self-Government Department be pleased to lay on the table a statement showing—

(*i*) from what year the Improvement Trust has been in operation in Calcutta;

(*ii*) the total amounts realised by the said Trust since its inception up to the end of the financial year 1933-34, from cess on gunny, hessian and sackings produced by, and exported from, the various jute mills;

(*iii*) the total amounts realised by the said Trust up to the close of the financial year 1933-34 from cess on raw jute bales exported for shipment from the jute presses—

(*1*) in and near Calcutta; and

(*2*) in and near Howrah; and

(*iv*) the total amount realised by the said Trust up to the close of the last financial year on account of terminal tax realised from passengers to and from Howrah?

(*b*) Will the Hon'ble Minister be pleased to state the result of the conference that was held under the presidentship of the Hon'ble late Sir Provas Chunder Mitter to consider the feasibility of the introduction of a separate and independent Trust for Howrah?

(*c*) Is the Hon'ble Minister aware that in that conference the representatives of the Howrah Municipality, the different railways and other commercial interest agreed to bear the recurring expenditure of a Trust for Howrah?

(*d*) If the answer to (*c*) is in the affirmative, will the Hon'ble Minister be pleased to state—

(*i*) the final recommendation of the Government of Bengal thereon; and

(*ii*) the final orders passed by the Government of India, if any?

(*e*) Is the Hon'ble Minister aware that there have been persistent demands from a long time on the part of the residents of Howrah for either the extension of the operations of the Calcutta Trust to Howrah or in lieu thereof the introduction of a new Trust for Howrah for improvement of its sanitary condition?

(*f*) If the answer to (*e*) is in the affirmative, will the Hon'ble Minister be pleased to state what steps, if any, do the Government of Bengal propose to take to meet the demands of the people?

(*g*) Is it a fact that certain portions of Howrah will be improved in connection with the improvement of the Howrah Bridge?

(*h*) If the answer to (*g*) is in the affirmative, will the Hon'ble Minister be pleased to state the areas which are in the contemplation of the Government for such improvement?

The Hon'ble Sir BIJOY PRASAD SINGH ROY: (*a*) (*i*) 1912.

(*ii*) and (*iii*) Government have no information as to relative proceeds from mills in Howrah and Calcutta, or from raw jute and gunny, hessian and sackings. The total amount realised up to 1933-34 through the export duty on jute is Rs. 2,21,64,628.

(*iv*) The total income from the terminal tax on passengers at Howrah station up to 1933-34 is Rs. 33,60,105 (including receipts from Sealdah and steamer companies in the years 1914-15 and 1915-16 only).

(*b*) and (*c*) The Conference discussed certain sources of revenue for an Improvement Trust for Howrah, but no agreement by the interests concerned to bear the recurring expenditure was arrived at.

(*d*) Does not arise.

(*e*) and (*f*) Proposals to this effect have been received but cannot be given effect to in the near future owing to financial difficulties.

(*g*) and (*h*) The question of connecting the new Howrah Bridge with the Grand Trunk Road with consequential improvement of the area traversed was referred by Government to the Calcutta Improvement Trust. The reply of the Board of Trustees is under the consideration of Government.

Pingna Civil Court.

27. Dr. NARESH CHANDRA SEN GUPTA: (*a*) Is the Hon'ble Member in charge of the Judicial Department aware that hardship has been caused to the litigants of the Gopalpur, Madhupur and Sarisabari thanas in Mymensingh district owing to the abolition of the Munsif's Court at Pingna?

(*b*) Do the Government contemplate re-establishment of a Munsif's Court at Pingna?

(*c*) Will the Hon'ble Member be pleased to state the number of cases from areas formerly under the jurisdiction of the Pingna Court filed in the Tangail and Jamalpur Courts in 1930 to 1934?

(*d*) Is it a fact that two additional Munsifs' Courts have been established at Tangail and Jamalpur since the abolition of the Pingna Court?

The Hon'ble Sir BROJENDRA LAL MITTER: (*a*) No such complaint has been received by Government.

(*b*) No such proposal is at present under consideration of Government.

(*c*) The information asked for is not available and could not be obtained without a laborious enquiry which, the Government regret, they are not prepared to undertake.

(*d*) No, there has been an additional Munsif at Tangail since the 31st October, 1935, only, but none at Jamalpur.

GOVERNMENT BUSINESS

LEGISLATIVE BUSINESS

GOVERNMENT BILL.

The Bengal Agricultural Debtors Bill, 1935.

Mr. PRESIDENT: We had not finished the third reading of the Bengal Agricultural Debtors Bill and if I remember aright Babu Hem Chandra Roy Choudhuri was in possession of the House when I adjourned the Council the other night.

Babu HEM CHANDRA ROY CHOUDHURI: Last evening I was telling the House that there is no reason why the Bill would not be successful if it is worked in proper spirit. Sir, we do not know what will be the criterion by which the Government would judge the success of the working of the Bill. Will the success of the Bill depend upon the amount of reduction of the total debts? My apprehension is not groundless. It is based on some documents supplied to us about the working of the Chandpur Conciliatory Board. I draw your attention to the statement K of a document. It will appear from that statement that the principal amount of loan advanced was Rs. 24,758 and the total amount stipulated for payment including previous payment was Rs. 22,383, *i.e.*, the total amount settled was not even up to the amount of principal. It is only 95 or 96 per cent. of the principal which has been settled to be paid to the creditors and out of this Rs. 22,383, previous payment was Rs. 5,806 and the interest due on the capital amount was Rs. 14,725. So leaving out the interest it is not even the whole amount of the principal of the loan that has been allowed to the creditors. Then, Sir, I cite a case out of some typical cases of agricultural debtors which were investigated by the Chandpur Conciliatory Board, and one of these cases is this: There was a debt of Rs. 200 which was contracted in 1921 and the rate of interest was 24 per cent. per annum and the amount on account of interest was Rs. 996, the total claim being Rs. 1,196. This debt was settled by the Board at Rs. 248, *i.e.*, Rs. 200 principal and Rs. 48 by way of interest was allowed. Out of this Rs. 248, Rs. 191 was paid in cash and then Rs. 9 was stipulated to be paid within 10 days of settlement. The amount was paid in time and the remaining Rs. 48 was stipulated to be paid in six biennial instalments of Rs. 8 each, *i.e.*, the debt will have to be paid within 12 years from the date of the settlement.

(The member reached his time-limit, but was allowed to proceed for three minutes longer.)

Another fact to which I would draw your attention is that the debtor has 1·7 acres of land in his direct possession and 2 acres of land in usufructuary mortgage, so he has got in all 3·7 acres of land in his possession, but the creditor is allowed only Rs. 48 to be paid in 12 years which is not even 1 per cent. interest. My time is very short. I am sorry I am unable to attempt to touch all the points which I want to lay before you. After all, though we have a great deal of difference with the Hon'ble Member as regards details and some of the principles, still I do not find any reason to oppose the passing of this Bill. There is no doubt the Hon'ble Member is very sincere as regards his purpose and he has great concern for the distress of the people. I think the debt of the agriculturists is so heavy that no time should be lost to try to give them some relief. Considering all these facts, the Hon'ble Member deserves the congratulations of the House for piloting this Bill and his sincerity of purpose.

Mr. SARAT KUMAR ROY: Sir, I rise to congratulate the Hon'ble Member for being able to successfully pilot the Bengal Debtors Bill through this Council. I cannot but admire his great patience, tact, ability and above all his earnestness of purpose. Sir, I have been connected with this Bill even when it was in its embryo stage, and I had to move several amendments to safeguard the interests of the community which I have the honour to represent in this House and also before the Board in which this Bill was hatched. But all along my motto had been to live and to let live. Sir, I yield to no one in my solicitude for the good of the cultivators, and I make bold to say that, though we landlords are much maligned nowadays, we were so long regarded as *ma-bap* of our tenants and I assert that very seldom we abused that epithet. Sir, we are responsible to the Government for the punctual payment of revenue and upon this depends the stability of the whole fabric of our provincial finance, and I am proud to say that, in spite of this great and continued economic depression, we made strenuous effort to fulfil our obligation. Nay, we had to make great sacrifices for this. The volume of arrears now lying unrealised with our tenants and which now form a large share of the debt of the cultivators is clear evidence of that great sacrifice. Sir, it is said that a big margin is left for us, the landholders, to what we obtain from the tenants and what we actually pay to the Government. But I am afraid, our accusors forget, and that perhaps deliberately, that except for a few of the landlords the majority of them have very little margin left to fall back upon, as in matter of fact, there are numerous subinfuedations intervening between a *zemindar* and the actual *raiyat*. And Sir, I claim, that we have not at all rack-rented our tenants. My statement is based upon the figures disclosed in the House by late Sir Provash Chunder Mitter, the then Revenue Member. I am, however, grateful to say that the Government recognising our difficulties and the ultimate

menace upon the stability of the revenue if the realisation of the current rent be in any way hampered, have gradually introduced clauses in this Bill which have removed our anxiety on that score to a very large extent. There is still vagueness in the Bill which should have clarified as my friend, Babu Hem Chandra Roy Choudhuri, has very ably pointed out in his speech before me; and unless the practical workings of the Bill, when it will pass into an Act, commence, we are unable to say what will really happen. Sir, I also thank Mr. Sachse and Mr. Townend for the stupendous labour they put in in framing and afterwards for piloting the Bill in this House, and I cannot resume my seat without thanking my colleagues who so ably criticized this Bill during its consideration; I mean, Messrs. J. N. Basu, S. M. Bose, Khetter Mohan Ray and Hem Chandra Roy Choudhuri.

Maulvi ABDUL HAMID SHAH: Sir, eighty-five per cent. of Bengal's inhabitants are agriculturists and the proposed measure is the first attempt towards the mitigation of their economic difficulties. It will not be an exaggeration to state that this is really the first law of this Council to redeem the intolerable debt burden of the Bengalee agriculturists. An Economic Enquiry Committee was formed on the lines of the suggestions of the speech of His Excellency the Governor of Bengal on the St. Andrews' Dinner of 1933. The Committee very minutely enquired into the economic conditions of the debtor and creditor, landlords and tenants and submitted a draft Bill with their report, harmonising, as far as practicable, the diverse interests of all these classes. The Irrigation Member, the Hon'ble Sir Khwaja Nazimuddin brought his Bengal Agricultural Debtors Bill in the last special July session of the Bengal Council, this is nothing but the same draft Bill of the Economic Enquiry Committee with minor alterations of details here and there. From the Select Committee right up to this third reading of the Bill, it has been thoroughly discussed clause by clause. I do not like to spend your time by detailed discussions over again. I shall simply discuss some points of principle. Why are the *zemindars*, money-lenders and pleaders opposing this enactment? Is there any real ground for their hostility?

The legal profession, by their opposition, was going to cut the soil from underneath their own feet. I pointed it out to them before in this very Council, that the prosperity of their profession depends on the satisfactory economic condition of the peasants. With their legal brain, can they disprove it?

I ask the same question to the *zemindars* and *mahajans*. Do they sincerely feel that it will be their best interest to drive away the peasants to the jungles of Assam and to convert the fertile deltas of Bengal into the abodes of wild animals? Will it not be to their better interest to allow them to live where they are and work for themselves as well as for their landlords and tenants?

Mr. President, to be frank, though this law has been named the Bengal Agricultural Debtors Act, yet I feel, a better and more appropriate name should have been "Bengal Zeminder and Mahajan Act." Nothing has been done to reduce the high rent charges that were prevalent and appropriate for the year of high agricultural prices preceding 1929 but they are to remain as they are even in these years of acute economic depression; rather adequate provisions have been made for the realisation of these rents at the beginning of every year. Rent has been retained as the first charge on land and no debtor will get benefit of this Act unless he can submit to the Debt Conciliation Board the rent-clearance certificate. *Zemindars* have been relieved of a very onerous task of detailed realisation work and will be able to effect a considerable retrenchment in the paraphernalia of their staff.

My respected friend Mr. Sarat Kumar Roy has said just now that in good old days the *zemindars* were *ma-bap*, *i.e.*, the mainstay and all in all of the *ryots*. So they were as long as they were *zemindars* in the real sense of the term and not merely rent-collectors that they are now. Landlords had then connection with land and its produce. They had to give a part of the produce in ancient days and in subsequent days when payment in kind ceased, they inevitably used to get remissions, full or partial, in proportion to the produce. Now, the *zemindars* extort the same money rent whether land has produced anything or not. It is scandalous to demand the same relation when they rackrent the tenants and indiscriminately put on sale their properties for non-payment of rents irrespective of the production of any year. Moreover, here they have got a fresh advantage towards realisation of rent and for that reason they should be grateful to the Government rather than oppose the measure.

The *mahajans* also have been really benefited. Under the strong temptation of usurious rates of interest they lent out up to their very last farthing. Most of them have not even the necessary court-fees to institute money suits against their debtors and some of them are finding it extremely difficult to meet their current expenses. If things are allowed to drift as they are now, 80 per cent. of the loans will be barred by limitation. Most of the *mahajans* will be ruined. By this law they have been saved from this catastrophe. Of course, they will get back their money by instalments—but get they will. No man of common sense should think that this arrangement is worse than utter ruination.

Even the annual instalments will be paid by the debtors with the utmost difficulty. According to the calculations of the Provincial Banking Enquiry Committee the agriculturists have practically no balance over their expenses to meet the annual instalments of debt reconciliation awards. Some of the members have suggested that the Bengal Government should lend several crores to the agriculturists to

liquidate the huge debts. But this is simply avoiding the issue. The cultivators are unable to bear the burden and to protect them, the amount and method of payment should be reduced and made easier. Again, this is an utopian suggestion because Bengal Government cannot possibly have so much money from anywhere.

But this redemption of debt will not by itself be sufficient. The productivity of the agriculturists must be increased. In this connection I hope that the village development scheme adopted by the Bengal Government will go a long way to increase the productive power of the agriculturists. Mr. Townend, our Rural Development Commissioner, is doing the real service towards this end.

I am rather unsatisfied over the speech of Mr. Porter on behalf of the Co-operative Department as regards the clause 27. But I ardently hope that the Co-operative Department be always alert so that it does not become a cause of fear to the public, rather be a friend and a support of the public.

I cannot but draw attention of the Government on another point. It has been suggested that Government by this law, have helped the Mussalmans at the cost of the Hindus in view of the fact that *mahajans* are generally Hindus and borrowers are generally Moslems. By this measure Government has added some fuel to the already burning communal fire. This line of argument is hopelessly fallacious. Of course majority of the borrowers are Moslems but there are non-Muhammadan borrowers as well. The measure is aimed at removing the difficulties of distressed peasants and not distressed Mussalmans. Does it not follow that because majority of them are Moslems, nothing should be done for them because there is likely to be communal bitterness over that? Probably the natural inference will startle the suggesters themselves. As a matter of fact religion should not be exploited as an argument for or against any relief measure. Every decent and honourable man should rise above such kind of pettiness. Whenever there is any distress anywhere relief measures should be brought to bear on that and the religion of beneficiaries should not even be enquired about. I appeal to the Government and I hope that the Government will treat this suggestion with derision and contempt which suggestions like these deserve.

Babu KHETTER MOHAN RAY: Mr. President, Sir, I rise to congratulate the Hon'ble Member and the Rural Development Commissioner on their patience and industry in successfully piloting the Bill, which is undoubtedly a unique measure in so far as it aims at uplifting the condition of the agriculturists of Bengal. How far the Bill, which will now be passed into law, will achieve the end it has in view, the passing of time will show. During the last few days high controversies took place on the floor of the House about the various clauses

of the Bill, and that showed the amount of interest which it has been able to evoke. Now that the Bill is going to be an Act, the discussions will have been set at rest and it is time for us to make a calm and dispassionate study of it.

It strikes me very much—and must have struck every other member of this House—that many an important matter, provision for which should have been made in the Bill itself, has been left to the rule-making power of the Government to have the final say upon. It is needless perhaps to say that the Government have taken upon themselves a tremendous responsibility for the proper and equitable working of the Bill, and as such they cannot proceed with too much care and caution. Any default or drawback on their part will bring in difficulties, the proportion of which are not easy to conceive. There is hardly any difference of opinion that the successful working of the Bill will very largely depend upon the personnel of the Board and the appellate officer. Instead of establishing all at once a net-work of a few thousands of Boards, as suggested by the Hon'ble Member in charge of the Bill, the Government should preferably begin the work by establishing at the headquarters of each subdivision, a Board which may have as its members persons with knowledge and experience of local conditions and free from party interests or other undesirable influences. The Chairman of such a Board should be a Munsif having considerable judicial experience. In the Central Provinces, I understand, a Subordinate Judge was appointed the Chairman of the Debt Settlement Board. I do not think it will be difficult in Bengal for the Senior Munsifs to act as the Chairmen of the Subdivisional Boards in addition to their own duties, for the pressure of their work is likely to decrease with the establishment of these Boards. After sufficient experience will have been acquired in this manner, the Government may proceed to establish Boards at the headquarters of each thana. But in none of these Boards should, at any event, be appointed persons who are likely to give way to party influences or make a profitable and illegitimate use of their privileged position as members of the Board. I am aware that I have uttered an unpleasant truth, but unhappy experiences of the past in matters akin to it force me to refer to it.

I must confess I was surprised when the Hon'ble Member suggested that the Board, as proposed by him, would work like village *panchayets* or village communities of the days of yore. Is not the Hon'ble Member aware that these ancient institutions are now extinct as the *dodo* with no chances to revive again? Have the village *panchayets*, I ask, any scope of working in the altered circumstances of the country? If the Hon'ble Member has measured the efficiency of his Boards in the terms of the usefulness of the *panchayets*, I would tell him that he has adopted a false standard of value and beseech him to try to look at the facts in their true perspectives. If the proposed Boards are made the prototypes of the Union Boards, as they now exist, I am sure they will

degenerate into Debt Cancellation Boards instead of being Debt Conciliation Boards. We have had very unhappy experiences about the capacity and efficiency and honesty of motives of very many of the persons who constitute the Union Boards, and we must not repeat the folly of the past. I believe the Hon'ble Member and the Rural Development Commissioner quite appreciate that a settlement of debts will not be an easy task. I do not know if they possess sufficient experience of the habits and peculiarities of the rural population. But from my personal knowledge and experience I can say—and Mr. Holland, the District Officer of Tippera, associates himself with my views—that it takes not unoften a long time before the creditors and the debtors can be persuaded to come to a term acceptable to both. When the debtor invariably pleads for the writing off, sometimes unreasonable percentage of his debts, the creditor insists on his "pound of flesh" and tug-of-war goes on. You can easily imagine the situation and some idea may be formed about the formidableness of the task in bringing these two "unlike poles" on a common platform. I fear if the Boards, as suggested by the Hon'ble Member, would be able to bring about any settlement in debts in spite of their honest efforts.

Sir, I am sorry that neither the Hon'ble Member nor the Rural Development Commissioner has sufficiently realised the immensity of the task of debt conciliation, and I can only pity the indecent haste and hurry with which this great problem has been approached and sought to be solved. They have not cared to measure the difficulties of the creditor in dealing with the applications of debt settlement and the reduction of the time-limit, in spite of the protest made in the Select Committee as well as on the floor of this House, within which the creditor has to file his statement, is only an instance of the short-sightedness who had a hand in the final shaping of the Bill. The Hon'ble Member and the Rural Development Commissioner want the Act to act as a magic wand and in their over-enthusiasm they have framed a measure in a manner which is likely to defeat its purpose. Has it never occurred to the Hon'ble Member that a creditor has got a large number of debtors and not one debtor to one creditor? Is it not common-sense that it is impossible for a creditor to deal with 50 or 60 or even 100 applications in the course of a month, particularly in view of the time that it takes to settle even one debt? And yet no provision has been made to extend the time-limit—the only thing provided being that the creditor will be allowed to file a statement should he succeed in satisfying the Board that he was unable to comply with a notice for sufficient reasons. But I can only say that to satisfy the Board, constituted as it is suggested to be, is only short of the impossibility.

Sir, the Bill has not been given the attention which the creditors did in justice deserve. I yield to none in my desire to see the debtors relieved of their heavy indebtedness, but should we not at the same time see that the creditors are not deprived of their legitimate dues?

They d... ...ul service in the past by helping the *raiyats* in times of their stress and strain. Is it then just and fair that no regard for their feelings should have any room in framing the Bill? It appears that the Hon'ble Member has put the creditors in the accused dock and no efforts have been spared to provide for as much pressure being put upon the creditors as has been possible. I appreciate the solicitousness of the Hon'ble Member and the Rural Development Commissioner for ameliorating the condition of the agriculturists, but I must tell them that they have failed significantly to hold the scales of justice even. To compel the creditors to go in for sacrifices in a matter which is an affair of the country as a whole may have a sentimental appeal, but when examined in the cold light of reason it lapses in justification. Sir, if the Boards are not presided over by a judicial officer, I am afraid people will lose all faith in its competence and efficiency and the Board itself may, as I have already said, turn into a body for the cancellation and repudiation of debts. Let not the idea go abroad that the Bill is intended for cancellation of debts. I shudder to think of the repercussions which the spreading out of such an idea will have in the country. It may give a rude shock to our social and economic structure. There is already a mischievous propaganda abroad that the Government is going to wipe out debts by this Bill. "Repudiation of debts," cancellation of debts—these things undoubtedly sound very nice, but they are outside the scope of practical politics. I would, therefore, impress upon the Government to see that the people view this Bill as a measure for relief of their indebtedness in exceptional circumstances. If the Act is worked in this spirit instead of hanging it like a guillotine upon the creditors, I hope it will achieve the end it has in view, in spite of many defects in the Bill.

Before I close, Sir, I would thank Mr. Thompson and the European Group of this House for their persistent opposition which has been mainly responsible for curtailing the life of this drastic measure. But for their valuable assistance in demanding the curtailment of the life of this Bill, it would, in all probability, have found a permanent place in the Statute Book to the detriment of the rural credit of the country.

Sir, I have already drawn freely upon the patience of the House, and I think I should now draw the line. I am sorry I have not been able to see eye to eye with the Hon'ble Member and the Rural Development Commissioner on important matters. Perhaps they have viewed things in their own light; perhaps they have made the Bill with the best of intentions. But I think they have approached the matter from a wrong angle and their remedies have, of necessity, been defective. But, nevertheless, I congratulate the Hon'ble Member and the Rural Development Commissioner for, whatever the defects of the Bill may have been, their patience, industry and unfailing courtesy must have won the appreciation of every member of this House.

Babu KISHORI MOHAN CHAUDHURI: I do not like to tire the patience of the House by saying many words on points wherein we differ. That is not my object. I simply rise to protest against the hasty manner in which the Bill is going to be passed, as it is not likely to benefit the debtors for whom it is intended. I am thankful to the Hon'ble Member and to Government for the anxious consideration they have given to ameliorate the financial condition of the people, but this is a measure which they ought to have taken up very cautiously. My idea is that they should have taken up the amicable settlement work first and compulsion should come later. The real difficulty which I feel is that the *raiyats* under the present arrangement will not be able to meet all the demands, namely, the demands of the *zemindars* for the full rent of the year, demand for the payment of instalments of the arrear rent, and the rather heavy instalments (I do not think they will be very light) of the debt portion to be paid to the creditors. At present no *zemindar*, I think, can realise the full rent for the year. I think 80 to 90 per cent. is the utmost that they can realise, and they are satisfied with that although the arrears are gradually increasing. Under the present arrangement full amount shall have to be paid *kist* by *kist* over and above the instalments for arrears of rent and for debt. Where will they get that money? The financial capacity of the tenants should first be increased. Land mortgage banks ought to be established in every subdivision and money at a low rate of interest should be made available, otherwise it will be impossible for the cultivator to pay all his demands. In this year of economic depression all over the province on account of failure of crops, I do not know if it will be necessary to declare a moratorium to stop all payments. That this measure has been very hastily taken up is apparent from the fact that several amendments had to be made. Government should have advanced step by step, otherwise it is very difficult to benefit the people for whom this Bill is intended. These are the words of caution that I wanted to bring to the notice of Government and His Excellency the Governor. Special measures ought to be taken at once for improving the financial position of the tenants. Irrigation ought to be taken in hand. Simply by forcing some arrangement between the debtor and the creditor the position will not improve. With these few words I record my protest against the Bill.

Babu NIHAR CHANDRA CHAKRABARTI: Mr. President, Sir, I will not take much time of the House because there are only a few minutes to close. Before proceeding to deal with the criticisms to the provisions of the Bill I would like to invite the attention of the House to some other points that have been raised by some of the hon'ble members here. Mr. J. N. Basu yesterday placed before this House an alternative plan in which he suggested that instead of instituting the Boards which are contemplated under this law we should have a

system of Arbitration Boards in which each debtor should nominate a judge and each creditor should nominate a judge, and the Government will nominate a third member. Mr. Basu possibly forgets that in this matter we have to deal with nearly 43 lakhs of families of agricultural debtors. In case Mr. Basu's suggestion was accepted, we would have to set up 43 lakhs of Boards, supposing all the debtors came to us. Mr. Tamizuddin Khan who said that the suggestion had come too late was possibly not informed that this suggestion was not an original one and that it had been placed before the Board of Economic Enquiry as early as 1934, discussed threadbare and rejected because it was impossible to follow up the suggestion.

My friend Mr. Shanti Shekhareswar Ray, whose speeches before this House had more rhetoric than reason (and I am glad that he is here to hear this tribute I am paying him) (laughter) yesterday gave a threat that the landlords of Bengal will not co-operate——

Mr. SHANTI SHEKHARESWAR RAY: Is the hon'ble member entitled to misrepresent a member?

Mr. PRESIDENT: You must not be so thinskinned. (Laughter.)

Mr. SHANTI SHEKHARESWAR RAY: I never uttered any threat.

Babu NIHAR CHANDRA CHAKRABARTI: I do not know exactly if it was the intention of the hon'ble member to mean a threat, but the hon'ble member uttered something which seemed very like a threat. Some other members also interpreted it as such. However, I think the landlords of Bengal will not have their vision so dimmed by the rhetoric of Mr. Ray that they will not observe the provisions that we have made in clauses 21A, 23A and 26(*1*)(*a*). All these clauses were designed to safeguard the interests of the landlords. Consequently, I think that if Mr. Ray wants the landlords to follow him in this matter, he will possibly have only as many followers as he had when he demanded a division the other day and was followed by only three other members.

Mr. SHANTI SHEKHARESWAR RAY: On a point of order, Sir. The hon'ble member has again misrepresented me. I did not ask for any division in which only two or three members partook.

Babu NIHAR CHANDRA CHAKRABARTI: So far as my recollection goes, Sir, he was one of the two gentlemen who rose to demand a division.

Mr. SHANTI SHEKHARESWAR RAY: The hon'ble member must be correct about his facts before he states them on the floor of this House.

Babu NIHAR CHANDRA CHAKRABARTI: I am sorry, Sir, and I beg to be excused if I am wrong though I believe I am not. These were the random arrows which were directed against this side of the House. Sir, I shall now pass on to more important points.

Sir, some of the speakers have said that this measure is intended for robbing Peter to pay Paul, that is by robbing the creditors the intention is to pay the debtors. Unfortunately for us, Sir, we have not in this House the petty creditors who command probably about 80 per cent. of the total capital which is now lying frigid in the hands of agricultural debtors. We have a few creditors like my esteemed friend Babu Khetter Mohan Ray, who, on his own admission, has money-lending business in several districts, but, Sir, unfortunately, the petty money-lenders are not rich enough to be elected to this House. And what is the position of these poor and petty money-lenders? Mr. Roy Choudhuri drew a fairly correct picture of this class of money-lenders in this House. These money-lenders have no money to go to the Courts, to pay lawyers' fees, and to get their debts repaid by carrying the proceedings up to the stage of execution. Many of them would not do so even if they had sufficient money, because they are afraid that it would simply mean throwing away good money, including landlord's fee to be paid in cases of purchase by themselves in execution sales, after bad. There is yet another class of money-lenders who know that if they purchased in execution sales they would not be able to take possession of the lands and this is a situation which has actually arisen in several parts of the province. There is, Sir, yet another class of money-lenders who are not themselves cultivators, but who know that if they purchased land they would have to leave it fallow or if they could settle it at all, as tenants have no money, would have to settle it without taking any *salami*, which practically means that they would not get anything out of the investment even by selling out the debtors. Sir, I submit that, as against these risks and difficulties, these creditors will get their awards, possibly the dues *minus* the interest in many cases, without the expenditure and trouble of civil litigation and a simpler and speedier procedure of recovery of the awarded debts. The choice will be an easy one, and, I think, most of them will welcome this measure. This is what the Subdivisional Officer of Chandpur says of his experience:—

"In the course of this work the following are some of the more important points that have impressed me—

'Readiness, sometimes almost anxiety of the smaller *mahajans* unable or unwilling to enforce their demand through a Civil Court to

take recourse to this system and their willingness to reduce it. In a few cases, the *mahajans* have, of their own accord, brought their bonds to me and asked me to arrange for a settlement.' "

This aspect of things was not noticed by the critics who possibly are not in the unenviable position of these petty creditors. Therefore, Sir, the argument that in this measure we are robbing Peter to pay Paul is entirely falacious.

The second point is in respect of the restriction of rural credit. Maulvi Tamizuddin Khan hit the nail on the head when he said yesterday that in spite of there having been practically a total contraction of rural credit during the last four years of depression, not a single acre of land has gone out of cultivation. This view is almost identical with the opinion expressed by the Board of Economic Inquiry. Sir, I had the honour of undertaking a few years ago an enquiry in the district of Faridpur for the Royal Commission on Agriculture in respect of the agriculturists' debts. In the course of my investigations I found that nearly 60 per cent. of the debts had been contracted for showy marriages and not for real agricultural necessities. I think, Sir, it is better to restrict rural credit to an extent which will prevent the cultivators from getting into unnecessary debts again.

Some of the hon'ble members, and particularly Mr. S. M. Bose—I hope he will correct me if I am wrong—possibly it may be someone else—have said that we have not fixed up the minimum qualifications for membership of the Boards. Sir, what we want in the members of these Boards are not University degrees or educational qualifications, but honesty and common-sense and a desire to do justice. These are commodities and qualifications for which no certificates or diplomas are given by any University—not even by a National University. How can we possibly fix any qualifications for this purpose? That being so, it was not possible to lay down any minimum qualifications.

Sir, the legal luminaries displaying lusture on the opposite benches, who argued this point so vehemently, may be said to have acquiesced in the jury system of trial in this country. Sir, trial by peers is a valued right obtained by the British people by their famous Magna Charta. Here we are providing for something by which the debtors and creditors will be adjudicated upon by their own peers. (Laughter.) That being so, and if in the jury system which is concerned only with the question of facts, the entire decision of which is left in the hands of a handful of persons, we can do without any minimum qualifications, although lives of prisoners are left in their hands, is there any earthly reason why we should not leave the composition of a debt of a few hundreds or thousands of rupees in the hands of persons of the same or even a little better class? Sir, jurors are selected, in every district by hundreds, but in this case a couple of scores or so of persons are proposed to be selected for each district, and consequently we can

choose with more care and closer examination in each case. Sir, there is absolutely no reason why we should not be able to trust them. Hon'ble members who are elected to this House seem to have so little faith in their constituencies that they are not sure that their constituencies will be able to produce a couple of scores of people who may be relied upon to do justice in these petty cases. That is the implication of their objection, Sir, and the implication is an insult to our people which, as a resident of this province, I repudiate with all the emphasis at my command.

Sir, some hon'ble gentlemen of this House—practically all the members of the Opposition—were very vehement in their demand for having judicial officers to preside over these Boards. Sir, I took the trouble of looking into the Civil List and found that there are only about 45 Subordinate Judges and 245 Munsifs in the whole of this province. So, if Government employed every judicial officer on this work, it would take 18 years to cover the cases of the 43 lakhs of agricultural debtors in this province. I am afraid that even Mr. Khetter Mohan Ray will not agree to wait for full 18 years for his first instalment to be paid to him. (BABU KHETTER MOHAN RAY: All debtors will not come to the Boards.) Neither can Government employ all judicial officers in this work. So, it is quite impossible to take judicial officers for all Boards. If we were to give these jobs to my learned friends belonging to the legal profession (MR. S. M. BOSE: Why not?), it would increase cost enormously and not creditors but the profession will get most of the money the debtors pay.

Section 20 has been characterized by Mr. Bose as revolutionary and not as a product of evolution as the Hon'ble Member in charge of the Bill described it. Sir, it is not really revolutionary but, in fact, it is a product of evolution. Mr. Bose is so well read that he went to import a *nazir* from Zanzibar (or was it Kamschatka?). I think, Sir, if he had only looked up the papers nearer home (MR. S. M. BOSE: I have.), he would have found that in the Central Provinces nearly 1,000 cases brought before the Boards had to be dismissed because secured creditors who found that the debtors had enough property—though not enough surplus income to pay the debts fully—did not agree to any settlement of their dues, though the offers were reasonable and in some cases even liberal. Experience has been absolutely the same in Chandpur also. There, the Subdivisional Officer, and also Mr. Holland, reported that as there was no system of compulsion, in cases like these, the refractory creditors could only be persuaded by pressure being brought to bear upon them which, however, was very much undesirable, and which they did not want to do. Mr. Bose made a sally on the floor of this House against certain officers in Chandpur, but this sally I am not disposed to honour by replying, as it was made against people who, not being present in this House,

Mr. Bose ought to have remembered could not repudiate the charges made against them. (Loud laughter.) But, that is the experience which we have, and on this experience is based our section 20 which does not appear either in the Central Provinces Act or in any other Act. That is possibly why the Hon'ble Member in charge of the Bill described it as evolutionary. It is certainly not a revolutionary measure.

Sir, another charge has been levelled and it is that we have left many things to the rule-making powers of Government. This is quite true, Sir. This sort of legislation is absolutely new in this province. Members of the legal profession ought to be aware that the land system of Bengal is entirely different from that in the Central Provinces and in the Punjab, and that the peculiar land tenure system here in Bengal gives rise to so many complications that it was not possible for any Government to put up all parts of the picture at one and the same time before the House. In the matter of representation by agents, Khan Bahadur Muhammad Abdul Momin pointed out to us case of *dewanis*. I am aware of another similar class of people—the *mukhias*. (BABU KHETTER MOHAN RAY: These are touts.) Not in all cases: They are not all touts. These persons alone are spokesmen in many villages in South-West Bengal and but for them we would not know most things about such transactions of villagers. It is absolutely necessary that there should be some flexibility within reasonable limits and that the Government should be left free to vary the procedure of their work according to experience and circumstances in different places. Sir, the Board of Economic Inquiry, which, as my friends know, is practically a non-official body, was as is clear from paragraph 12 of their report, very strongly of opinion that considerable power to vary the procedure of work must be allowed to make the measure a success. It was decided, therefore, that power should be reserved to Government. It is quite true that Government are not in a position, not knowing what practical working will need, to state everything they will have to do in all matters left to the rule-making power as Mr. Ray has said. [MR. SHANTI SHEKHARESWAR RAY: Hear, hear (and ironical cheers)], because there may be difficulties——

(At this stage the member having reached his time-limit had to resume his seat.)

Maulvi ABUL QUASEM: Sir, I would begin, by congratulating the last speaker, Babu Nihar Ranjan Chakravertty, on his very excellent and convincing speech and I believe a meed of praise is also due to him because by his services to the Board of Economic Enquiry, he had made a contribution to the shaping of the measure which is going to be passed into law, and I readily give him this praise. My time is brief and I am thankful to you, Sir, for giving me this opportunity

of speaking a few words. I would not dilate on many points. Sir, there is an influential section of this House which has been opposing this Bill throughout. When the last stage was reached, it was expected that they would relax their opposition but that expectation has not been realised and they have done nothing more than offering criticisms against the Bill and its promoters. I have very carefully listened to these criticisms. They were mostly one-sided. These critics do not seem to have sufficiently realised the fact that there has arisen a grave emergency in this province due to the economic depression which calls for prompt handling so that the situation may not get beyond control. The emergency is there and one would have expected that they would bring forward constructive criticisms of Government's measure and make proposals which would be an improvement upon those in the Bill. No such proposal has come and they have only harped on one thing, namely, that the Bill goes against the interest of the *zeminder* and the *Mahajan*. That is the burden of the song they have sung. It appears to me that these gentlemen are purposely shutting their eyes to real facts. Mr. P. Banerji yesterday went so far as to assert that this was a mischievous measure designed by the Government to crush the middle class people. Exaggeration in language is the stock-in-trade of certain politicians, particularly, in Bengal. But, Sir, I feel that Mr. Banerji beat all previous records yesterday. I believe, Sir, that Government by introducing this measure has really taken a step to save the middle class people. Sir, what is this Bill for? Whom is this Bill going to serve? More than 80 per cent. of the people are agriculturists in Bengal. They support the whole superstructure of all other classes of Bengal's population. If the base goes, the whole superstructure will come down with a crash, like a house of cards. These people do not seem to realise the danger ahead. Ostritch-like they are burying their heads in sand, but if they do not take wise measure of precaution in time, and prevent the storm from gathering to a head, burst the storm must, and this is as sure as night follows day and in its onrush, it will crush all alike, the rich, the poor and the middle class. The Government in my opinion is not befriending the agriculturists so much as the upper classes. They are trying to save Bengal from the sure and utter ruin that will overtake it, if the agriculturists are not saved. What does the Government's proposal amount to? It is very short and simple. The agriculturist should not be thrown out of his land, should not be rendered a landless labourer. Bengal has been suffering from terrible economic depression. If Bengal's millions are turned out into the streets landless, what will be the position? Not communalism—that is, after all, a mild thing—but communism will take root and spread like wild fire which will shake the very foundation of society and overwhelm the privileged classes in red revolution and ruin. Government by introducing this measure is

really trying to help all classes of people, the middle class people as well as the *mahajans*—all included.

Sir, I deplore very much the remarks made by Mr. Shanti Shekhareswar Ray the day before yesterday. He said that this measure was a communal measure designed by the Government in the interest of the Muslims against the Hindus. He said that that was the view expressed in the entire Hindu press. On the platform and in the press the outcry against the Bill has been made by the Hindus. Who are these Hindus, may I ask? Are they not only the upper caste ones? Sir, I am reminded of a memorable passage in Edmund Burke. I cannot give the words exactly. I think Burke has said that a particular insect occupying an infinitesimally small portion of a vast field began making such noise that it came to have the belief that it was the only occupant and sole master of the field. It appears to me that the upper caste Hindus, who have the press and the platform at their command and are most vocal, think they are the only people who matter and are to be reckoned with in Bengal. They are profoundly mistaken. The upper caste Hindus are after all a small minority of Bengal's population, the vast majority of which consists of lower caste and scheduled caste Hindus and the Muslims. If the other classes of the people in Bengal are not as vocal as they are, let them not *hug* the delusion to their hearts, that they are the only people whose voice shall prevail there. Government has only sought to do its primary duty of doing the greatest good to the greatest number of people. Mr. Ray said the measure was against the Hindus. I believe his definition of the term "Hindu" excludes all Hindus except the upper caste ones, of which he is a shining light. Whenever I hear talk of communalism and Hinduism by the high caste Hindus one thing strikes me most forcefully and that is that these pillars of Hinduism do not class the lower caste Hindus, and the scheduled caste Hindus, as Hindus. Take the lower caste, and the scheduled caste Hindus; they are mostly agriculturists and their number is overwhelming. These people are certainly going to be benefited by this measure and not simply the Muslims. Can this measure by any stretch of imagination be characterized as anti-Hindu? I think that Government, though they are perfectly justified in bringing forward this measure, have waited too long. While other provincial Governments have led, our Government has only followed. I do not like this measure entirely. Its provisions do not go far enough to relieve the agricultural debtors. Government have weakly yielded to the clamour of the influential *zeminders* and *mahajans* and whittled down many of its provisions, but so far as it goes, Sir, I accept it on the principle that half a loaf is better than no bread. When Mr. Ray made his speech I gathered the impression that he uttered minatory words to the effect that, if the *zeminders* and the *mahajans* were antagonised, it would go hard against the Government.

Does Mr. Ray expect the Government to fall immediately because of his threat? No, Sir. The heavens would not fall, the Government would not be injured, if by a measure like this the *zeminders* and *mahajans* feel antagonised. Mr. Ray criticised the measure as a communal one. I could quite justifiably criticise the Court of Wards Amendment Act, just passed, as a communal measure designed to benefit the *zeminders* who are mostly Hindus, but I have no desire to be led by Mr. Ray.

Lastly, Sir, I whole-heartedly join in the chorus of congratulation which has been showered upon the Hon'ble Member, Mr. Townend and Mr. Sasche. I would only add one word regarding Mr. Townend. I have watched, with great respect and genuine admiration, his energy, his enthusiasm, and his self-devotion. Bengal is fortunate in her first Rural Development Commissioner. May he succeed in the great work which he has been called upon to perform.

The Hon'ble Khwaja Sir NAZIMUDDIN: I am extremely grateful and thankful to the members of this House who have congratulated me and the Government and the various officers for getting the Bill through. Sir, I am convinced that the members of this House will have the satisfaction of passing through a Bill, which, if it is enforced and carried out in the spirit in which it has been drafted and conceived, will be satisfied that they have been able to do something of permanent and lasting good especially to the teeming millions of the masses and also to everyone of this province. I would not at this stage go into the various points that have been raised in criticism of this Bill. I do not think anything new has been put forward, and it is no use replying. But I would like to say this much that in this House and everywhere, everyone will admit that the aim and object of this Bill and the result which we want to achieve are those with which everyone agrees, irrespective of caste or creed or class. It is owing to widespread economic distress in Bengal, and the fall in the price of agricultural produce, the paying capacity of the cultivators became such that they are not in a position to repay their debts, and therefore, we have devised a means by which we can lighten the burden of indebtedness to the extent of the paying capacity of the debtor. We are certainly calling upon the creditors to make a certain amount of sacrifice, but the indirect benefit which will fall on the rest of the people of this province, will more than compensate them for the sacrifice they make. It is not proposed in any way, nor is it the idea that there should be any repudiation of debt, nor any unfair or undue curtailment of debt. We all agree as to the result we want to achieve through this Bill, and I appeal to one and all the members of this House, and through them I call upon the people of the province, to try and co-operate and give of their best in making this Act a success. We do not claim it to be a perfect Act. "It may have defects in it; but

these defects can be remedied by amending Acts. If it is found that any class of persons are being prejudicially affected by it or are being unfairly treated, then it is possible for the legislature to amend the Act to prevent that. But in the beginning we should try to get the best out of this Act. If we create an atmosphere which will receive this thing in a good spirit, and if everybody will try and co-operate and give out his best, then the best possible result will follow.

In conclusion, I would like to thank you, Sir, for the courtesy you have shown us, and for the facilities you have given us for moving short-notice amendments. I would also thank the officers of the Legislative and Council Departments for the help they have given us. There is one other name I would mention here, that of Rai Bahadur Jamini Mohan Ghose, who was the Secretary of the Economic Enquiry Committee, and who has given us considerable assistance in getting this Bill passed through the Council.

With these words I beg to move that the Bill, as settled in Council, be passed.

The motion was put and agreed to.

Mr. PRESIDENT: Gentlemen, before the Council is prorogued, I should like to avail myself of the pleasing opportunity to wish each and every member of the Legislative Council a Happy Christmas and a Prosperous New Year. Work is a great cement, and I really feel a wrench within myself when I say good-bye to you all, but we part to meet again.

Prorogation.

Mr. PRESIDENT: I have it in command from His Excellency the Governor to declare that the Bengal Legislative Council stands prorogued.

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President (the Hon'ble Maharaja Sir Manmatha Nath Ray Chaudhuri, of Santosh)

The best thing for members, who have not already spoken, would be to speak on the subject and draw their own conclusion. Members are not allowed to carry on a conversation on the subject across the floor of the House: p. 73.

The Hon'ble President will not allow any question which is hypothetical or much too frivolous: p. 191.

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